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THE SUPREME COURT DECISION IN "NCAA v. UNIVERSITY OF OKLAHOMA"

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

THE IMPACT OF THE SUPREME COURT'S DECISION IN "NCAA v. BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA"

Cedar Falls, Iowa

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THE SUPREME COURT DECISION IN "NCAA v. UNIVERSITY OF OKLAHOMA"

MONDAY, 19 NOVEMBER 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Cedar Falls, IA.

The committee met at 1 p.m. in Maucker University Union, University of Northern Iowa, Cedar Falls, IA, Hon. Charles E. Grassley (acting chairman) presiding.

Committee staff members present: Alice R. Milder and Bruce Hallman.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator GRASSLEY. I want to take the opportunity at the start of this meeting to say thank you to all of you who are here, members of the public at large, our witness list, official people to testify, and also press, radio and television people who are present.

I'd also say that we are in Iowa with this hearing before the Judiciary Committee, and the reason the Judiciary Committee of the Senate is involved in this issue is because the Judiciary Committee has jurisdiction over antitrust legislation in the Senate.

The subject of our hearing today is the first in the Senate on this issue since the decision of last June. The House of Representatives Commerce Committee did have a hearing looking into this issue, but this is the first in the case of the Senate.

The focus of today's hearing is the impact of the Supreme Court's decision in *NCAA* v. *Board of Regents of the University of Oklahoma*. This current situation has arisen out of circumstances which reach back to the 1940's and 1950's when television began broadcasting college football. In 1951, recognizing that TV telecasts may decrease attendance at games, the NCAA devised a television plan which gave it exclusive control over the broadcasting of college games. At that time revenues from this enterprise netted the schools a total of approximately $1 million. If the NCAA's 1982–85 television plan had been retained, revenues would have reached over $263 million. It's obvious that college football does not only play an integral part in the overall spirit of the institution, but has become a big business as well.

The contracts negotiated by the NCAA with ABC and CBS contained a number of restrictions designed to give as much exposure to the largest number of schools as possible. Such limitations included guaranteed appearances to both large and small schools, limits on the number of games that could be broadcast, and restric-

tions on the amount of money received and number of times each school could appear.

Feeling shackled, the Universities of Oklahoma and Georgia sued the NCAA in 1981 for violation of the Sherman Antitrust Act under a restraint of trade theory. The Supreme Court upheld this theory, and in a 7 to 2 opinion found that—and I quote:

> Because it restrains price and output, the NCAA's television plan has a significant potential for anticompetitive effects.

It is this decision that has led us to today's confused situation.

Our purpose is not to second-guess the courts, but instead to assess the impact of their reasoning and examine whether Congress should have any role in developing a response to this problem.

Among the issues to be discussed today, or at least I would hope would be discussed:

One, should Congress grant the NCAA a limited exemption from the antitrust laws.

Two, what effect has the decision had on the financial status of both large and small schools.

Three, has there been increased or decreased exposure as a result of the decision.

Four, has the decision endangered the live gate.

Five, in the wake of the decision, what kind of restrictions can be imposed upon schools by broadcasters which limit appearance rights.

Last, what effect will Judge Burciaga's most recent findings have on the future of college football broadcasting.

I look forward to hearing each of our distinguished witnesses as they shed some light for us on this controversial topic.

Before calling the first panel I think I'm going to call panel IV first, because of the necessity of one of the panelists to go to the airport, but before I do that, I'd like to say two or three things that are normal announcements at a hearing like this.

The hearing record generally would be held open for about 10 or 15 days. This allows anyone who has additions that they want to make to their statement to submit them to us in writing. It gives myself, as chairman, and also other members of the Senate Judiciary Committee who, obviously, aren't here, a chance to to ask questions of the panels, to submit those questions in writing to you, and then we'd ask that you submit answers in the same way, within that period of time—within a reasonable period of time, assuming you get the questions right away. It also gives an opportunity for you, if you have any corrections to any of your statements, submit those corrections to us.

I also want to announce that this hearing will be transcribed and will be printed as an official hearing record of the Senate Judiciary Committee. What you say plus what I say, and the questions we have, will be recorded. Everybody we invited to testify is here, and there were people who we invited to testify who couldn't be here, and some of those people submitted statements for the record. Also if there is anyone in the audience who, wasn't invited to testify, but who wishes to do so, please submit a short statement in writing

that's pertinent to the issue before us. We would receive that statement and print it as if it were given orally.

Let me also add that for the benefit of the press, there's copies of most, if not all, of the statements on the back table that you're entitled to.

I'd like to now call panel IV, Thomas Graves, James Hedlund, and Rex Lardner, and I would ask each of you to come and sit at the table. This panel represents various communication interests that have been affected by the Supreme Court decision. Also invited to testify were the three major networks—CBS, NBC, and ABC—but due to scheduling conflicts, were unable to attend. We have their submitted testimony for the record.

First, we have Thomas Graves, director, government relations and development at Heritage Communications, with a concentration in the areas of legislation and programming. He is also executive director of the Iowa Cable Television Association.

Mr. James Hedlund is the vice president of the Association of Independent Television Stations. Previously he was trade assistant that represented 115 commercial channel independent TV stations across the country, and from 1977 to 1981 he was the minority staff director of the House of Representatives Committee on the Budget.

Mr. Rex Lardner, Jr. is director of programming for Sports Time, which is the regional pay cable Midwestern sports network. Prior to this, Mr. Lardner worked as the director of sports programming for CBS, and also worked at NBC in sports.

I thank you for coming, and I would ask you to proceed in the order you are listed on the panel—Mr. Graves, Mr. Hedlund, and Mr. Lardner. I would ask each of you to give your testimony, and at the end of the testimony I may have some questions that I may ask you.

Could I also make one further general administrative request, which I hope isn't a burden on anybody; if it is, then feel free to say so. But, pursuant to instructions given by staff at the formulation of the program for today's hearing, we ask, as much as possible, if you could summarize your statement in 5 minutes. We'd appreciate that very much.

STATEMENTS OF PANEL CONSISTING OF: THOMAS GRAVES, DIRECTOR, GOVERNMENT RELATIONS AND DEVELOPMENT, HERITAGE COMMUNICATIONS; JAMES HEDLUND, VICE PRESIDENT, GOVERNMENT RELATIONS ASSOCIATION OF INDEPENDENT TELEVISION STATIONS (INTV); AND REX LARDNER, JR., DIRECTOR OF PROGRAMMING, SPORTS TIME, ST. LOUIS, MO

Mr. GRAVES. We at Heritage Communications appreciate very much the opportunity to appear at this hearing. Heritage is one of the Nation's largest cable television operators. Headquartered in Des Moines, we serve more than 150,000 subscribers in Iowa alone, where we have service in more than 100 communities statewide.

It has been an interesting year for college football. I've watched football teams from across the country and from every possible conference, on networks and stations which previously did not carry live college football. For Iowans, the greatest impact probably was

the availability of Iowa and Iowa State football on a more regular basis.

Certainly, this first year after the NCAA relinquished its absolute control over college football on television has not been without its problems. Some would say it has been chaotic. I'm sure the difficulties of this season, particularly in the area of revenues, will be well articulated by others today. Instead, I'd like to discuss two points:

First, the viewpoint of the consumer and, second, the great difficulty of living under the former NCAA rules.

I'm concerned that the consumer could be the forgotten factor in this equation. Has the consumer been better served this year than last, and, will he be better served in the future of NCAA's former monopoly is permanently eliminated?

I would argue that the consumer has definitely enjoyed an improvement in his viewing options this year and will continue to enjoy this, because the NCAA no longer has a stranglehold on television rights.

Heritage Communications hopes to play a future role in producing and presenting college football on television. We have not done so directly this year, but it is because the games were easily available elsewhere; not because rules prevented us from doing so, as in earlier years.

Meanwhile, the consumer, in Des Moines this year was able to view 9 of the 11 football games Iowa has played so far this season, on CBS, the Iowa Television Network and on Sports Time. Des Moines residents watched Iowa State several times. They watched Drake and Northern Iowa on Sports Time, which carries a Missouri Valley conference game weekly. Sports Time is now available to more than 120,000 Heritage Cablevision subscribers in Iowa.

The consumer now has choice. He or she will not tune in all the available games—at least I hope not, but I believe that he or she previously tuned out some of the dreadful games that were once the only choice.

Iowa football, at least until its recent renaissance, was not something you saw on television. And this year our Cyclones might not have appeared at all. Why not carry the games locally or regionally in the past? We could not carry them because the NCAA rules were cumbersome, difficult and unfairly biased against any medium except network television.

NCAA's football television rules were so complicated that it would be difficult to summarize them in the short time allowed. Instead, let me cite a couple of examples of the interpretations of rules which resulted in Heritage's inability to cablecast games of Iowa teams. These games ended up being unavailable to anyone in Iowa as a result.

In one case we ran into article 16, which stated in part that the permissible area of reception of a cablecast shall be "a 120-mile radius from the designated center of any television market in which the cablecast is authorized." In other words, Heritage could only cablecast to some of its Iowa systems, and could not allow the game to be carried by non-Heritage systems in places such as Waterloo or Sioux City.

More onerous, perhaps, was the requirement that no "appreciable damage" be done to any conflicting football game within a 30-mile radius of any cablecast system. This rule has been interpreted by the NCAA to mean that all such conflicting games be sold out.

On one occasion in which we hoped to telecast a Big Eight game from Ames, Heritage discovered that it would have to buy out not only Drake Stadium, but the stadium where Simpson College in Indianola was playing its home game. And this was for carriage in Des Moines only.

A more reasonable interpretation suggested by us would have been that the cablecaster compensate the schools for the shortfall they might experience from their average box office receipts of those games over the last several years. Either way, it represented an unsatisfactory requirement that cablecasters subsidize another football program.

The truth is, the rules were biased in favor of network television—granting them, for instance, first right for exclusive carriage of a game, even if we could meet the above criteria. This was an unacceptable problem which provided an uncertainty that we would be carrying a game, even after notifying our customers, advertising the game and marketing it. Simply put, the rules were biased against the new media opportunities offered by such services as cable television.

In summary, let me indicate that we believe no legislative action is necessary in the case of the college football on television. Certainly the Congress should not grant the NCAA or any other group a monopoly over college football on television.

Thank you very much.

Senator GRASSLEY. Thank you. Mr. Hedlund.

Mr. HEDLUND. Thank you, Senator Grassley.

I'm sorry that the relatively short notice for our organization prevented us from getting one of our station general managers here. I think one of them would probably be in a much better position to give it to you from the horse's mouth, as it were, rather than hearing it secondhand from me. But, nonetheless, I will do what I can.

I am the vice president of the Association of Independent Television Stations. We, in Washington, go by our acronym, INTV.

Let me pause for a moment and give you just a little bit of background about who we are, because I think that's critically important to the remainder of my statement. We are a trade association that represents approximately 130 independent commercial television stations around the country, ranging from Boston to Los Angeles, Seattle to Miami and, in fact, there is already one independent station in Iowa on the air, which is, through my notes, KCBR, which is channel 17 in Des Moines. We expect three or four more on the air in different cities in Iowa within the next couple of years. So, while independent television may not be a particularly well known thing in Iowa at the moment, I fully expect it to be in the near future.

Independents are the fastest growing segment of the television industry. Since 1972, for example, I believe there has been one new network affiliate in total added, whereas we have doubled the size of our organization in the last 5 years, and independent stations

are coming on the air at the rate of about 25 to 30 a year in the last couple of years. So we at some point in the very near future are going to be a very sizable organization, available to virtually every television viewer in the United States.

To understand why we're testifying today, please understand that the distinguishing feature, the one thing that distinguishes an independent station from an ABC, NBC or CBS affiliated station, is that we have to buy or produce programming to fill every single minute of broadcasting day. We don't have the luxury like an affiliate, of flicking a switch and having these mammoth corporations in New York send us most of the programming we then put out over the air.

As a result of this, the most critical concern of every independent station is the availability of programming, something not only to just put on the air, but something to attract the viewers so they'll be watching our independent stations instead of ABC, CBS or NBC. And that concern over programming is equally critical to that station as WPIX in New York, KCBR in Des Moines or KTLA in Los Angeles, or any of the stations in between.

We also have, I think, a rather unique position in this dispute over college football television rights, because of two factors: One, while we were not plaintiffs in the case recently decided by the Supreme Court, we did file amicus briefs on behalf of the plaintiffs, the Universities of Georgia and Oklahoma, in both the circuit courts and the Supreme Court.

Second—and I will go on to explain this a little further—in early September of this year our organization, on behalf of our membership, filed two antitrust suits in Federal court naming as defendants in this action ABC, its owned cable programming interests, ESPN; CBS; the College Football Association, which we refer to as CFA; and the Big Eight, PacTen and Big Ten Conferences.

Essentially, we are charging that the very same colleges that violated the antitrust laws as members of the NCAA are continuing to engage in anticompetitive practices merely by changing the name of their joint marketing arrangement from NCAA to CFA.

Let me explain. The Supreme Court, in our mind, ruled that the NCAA and its member schools were violating the antitrust laws by illegally conspiring to reduce the supply of college football games that were available to television, and in the magic formula that every college student learns in economics 101, by reducing the supply of something, you drive up the price. It's a classic cartel, and it's exactly what the Organization of Petroleum Exporting Countries did in the two oil freezes that led to the drastic increases in oil prices. They reduced the supply enough to substantially drive up the price. This is exactly what the major football-playing colleges in this country were doing through the NCAA.

And our belief is that they are, as you said in your opening remarks, involved in a very big business. Television rights to college football represent a multimillion-dollar business. And our view is that the colleges who have decided to play in this league ought to play by the same rules everyone else does.

As a result, of course, we are very pleased with the Supreme Court's decision. But the question got to be, what did we get? What did our stations, and we believe the public, gain from the Supreme

Court's decision? And while this may overstate it slightly, I will answer, little and nothing. Little in the following sense: We did see an improvement in the marketplace. For the first time ever, our stations and other local stations which may be affiliated with some of the other networks, were able to carry some television football games. But there were some real restrictions on this, and let me explain what they are. First of all, we had severe time restrictions. The only time of the day that independent stations or affiliated stations, local stations, could carry college football—apart from the network fees, which I'll get to in a moment—was in what is called the early Saturday window. And that meant that on the east coast a college football game had to start by about 10 after 12 in order to guarantee that that game was completed, over and finished with before 3:30, when the ABC network started its national game. Now, 12:30 doesn't—that's a little early for me from my days of college, but it gets more absurd as you move west, so that in the central time zone you're starting a game approximately a quarter after 11 in the morning. You move to the mountain time zone, a quarter after 10, and in the Pacific time zone, a quarter after 9. Now, the idea of having a tailgate party at 8:30 in the morning is a little absurd, and clearly it works enormous hardships on the students, the alumni and the fans who support it.

From s strictly business standpoint, starting games—and this is the only time zone in which we were allowed to carry these games—also worked a great hardship from the standpoint that the audience is not there at 11 in the morning. The key audience which advertisers are willing to pay a 75- to 85-percent premium on reaching is the adult, college-educated male between 25 and 54. So that the key demographic audience that a lot of advertisers pay dearly to reach is the key audience that watches college football on Saturday. They're not there at—the kids are still watching TV—at that hour, when you have programming.

Second, the conferences themselves have restricted the rights of local stations to serve their public, in the following way—and I hope I don't get stoned in here—but the Big Eight, as an example, and one of the reasons they have been named a defendant in our suit, has cooked up this deal—and this is very similar to the other conferences as well—which creates a "game of the week" concept. So that in this absurdly early time period on Saturdays, only one Big Eight game is made available to local television stations. And that's fine, I suppose, that you may on a given week have Kansas State-Oklahoma, and I'm sure a very popular game in a lot of parts of the Midwest. But, golly, at the same time period Iowa State might be playing Colorado or Missouri, and they are forbidden from selling the TV rights to their games in competition with the Big Eight game of the week.

Now, in theory, that will mean that Iowa State gets on a couple of times during the season. The real question is, wouldn't the people of Iowa much prefer, if Iowa State is willing to do it, watch all of Iowa State's games, rather than getting one here and getting one there?

Again, it is an effort to withhold production, withhold supply, in the hope that they can drive up the price. That's what I meant by getting a little. By getting nothing is what we consider the most

egregious feature—the contract that ABC signed with the College Football Association. It calls for totally exclusive rights to all CFA football games from 3:30 in the afternoon Eastern time to 10 p.m., in combination with ESPN, which ABC owns.

Now, we don't have any objections to ABC going in and buying, if the colleges are willing to sell it, the rights to the hottest national game. Quite clearly, this last week it was Oklahoma-Nebraska. This coming Saturday it's going to be Oklahoma-Oklahoma State.

We don't have any illusions that one of our stations can outbid ABC or a regional syndicate of ABC, and that's fine. They can get those games. But we believe that it's totally illegal and not in the public interest for ABC to say, not only do we get our pick of what game we want, but all 61 remaining CFA schools are forbidden from having their games televised during any part of this time period.

Essentially, the CFA is doing exactly what the court found the NCAA guilty of doing, which is conspiring to reduce output and increase prices.

Now, understand our position. We are not only independent of the three major television networks in New York, we're independent of each other. In a lot of markets, there are two and three independent stations, and our members fight with each other like cats and dogs for market shares that attract an audience. We are essentially local stations trying to serve local needs, trying to find games, trying to find movies, trying to find shows that will interest a local audience. And when we go after a football game, we're trying to serve that local audience—not New York dictating what all the people in the country are going to see.

We know that the networks will outbid us for the hottest key games. But on the other hand, just as you've heard the expression—and probably know it much better than I do—"Politics is all local"—essentially, football is, too. There are certainly national games that will attract an audience. We all want to sit around the television on New Year's Day and watch the Orange Bowl and the Rose Bowl. But, by and large, throughout the season, a game, a local game—and by "local," I don't mean just down the street—in Iowa, for example, a game played by Iowa State and the University of Iowa, for example, is going to have a lot more appeal than some big national game played between U.S.C. and Notre Dame, for example.

USA Today just completed a poll where, in fact, they proved that a majority of the people who watch college football on television would prefer to see a game involving local schools than one of national importance involving schools from outside their area. And the networks don't want to allow this to happen.

In conclusion, all that we want, the reason that we brought these antitrust suits, is, all we want is the opportunity to compete. If a college says, "No, I don't want to sell the television rights to my game," that's fine. In a lot of cases they'll say, "I want to sell them, but somebody else bid a better price than you." And that's fine too. We just don't want college athletic directors coming to us and saying, "Well, gee, I might like to, but I can't, because we've agreed that only one of our conference games a week will be on," or "I don't want to move the game to start at 10 o'clock, and ABC

won't let me televise it against their game." That's what we want to stop happening.

We are concerned that after this year is over, some of the major football-playing schools are going to try to get next year's season even more exclusive. They all seem to worry about what they call a glut of college football on television, which I think is absurd, because while there might be a lot of whining by the networks that their ratings are down, the most recent A.C. Neilsen figures—and Nielsen is one of the two major national rating firms—show that college football television viewing this year is up substantially from last year. And that's interesting, because starting to peak in about 1980, and very steadily since 1980, before the Supreme Court's decision outlawing the NCAA's football plan, college football television viewing had been declining rather rapidly. And this year, for the first time, it is up substantially. Nielsen says about 16 million viewers each Saturday, which is up about 1½ million from just last year alone. We think that is already happening, and will happen more if more and more schools are allowed to put their games on television to appeal to their local fans. And while I fully suspect that we will hear a lot about how the money doesn't seem to be there, I have two observations on that. One is, I think it's clear the networks have admitted that the contract that they cleverly got out of, when the Supreme Court decided the NCAA deal was illegal, was costing each of the networks about $4 million a year—losing $4 million apiece. And while he hasn't said it publicly, in the industry it's widely believed that Turner had way overbid for his package of evening games, and was losing his shirt.

So one thing I think is that the 1982 contract signed with the NCAA, the two networks, and Turner was probably quite artificial and would not have been repeated, because that money was simply too high for the ratings those games were achieving.

And second, the mere figure that college football viewing is up—and that includes starting these games at 10 o'clock or 11 o'clock in the morning—up 1½ million viewers over the last year, the market is going to work. And that is going to be translated into more and more dollars for college football, for the schools to get, because inevitably the one thing that determines how much a television station will pay a college for the rights to that football game is the number of people that watch it. Because advertisers buy people. They don't buy a 30-second spot for just a flat amount of money. You've got to be able to show how many people you're reaching by that.

And if college football viewing continues to go up, the amount of money eventually is going to catch up with that. Now, this year, I think it's fair to say that there are probably some syndicaters and individual tlevision stations who pay colleges far too much for the rights to their games, and I'll bet there are a lot who pay them far too little. And that's going to come out in the wash, as the ratings come out; people have some idea of how many people were watching that game.

My advice, however, is that at this point in time, it is far too early to make any judgments of whether the Congress ought to get involved. I think the market has just started to work. If our antitrust suits are successful, we think it will work even better next

year. And we believe that, in the end, it's going to be of greatest benefit to the people of the United States who support most of these colleges with tax dollars and like to watch them on television. And we simply want that right for the people.

Thank you.

Senator GRASSLEY. Thank you. Mr. Lardner.

Mr. LARDNER. Thank you very much. We appreciate the opportunity at Sports Time to have the opportunity to speak to you.

My background involves direct association with colleges, conferences, and the NCAA as it relates to college football. While I was director of programming at NBC Sports, I worked directly with the College Football Association in putting together a schedule of football games for the CFA.

For a variety of reasons, as I'm sure many of you know, the contract did not come to fruition. The project was abandoned in the fall of 1981.

After leaving NBC Sports in May 1982, I became the director of program administration at CBS Sports, and worked directly with both colleges and conferences and the NCAA TV Committee, while administering the TV plan for CBS Sports in 1982 and 1983.

Since that time I've become director of programming for the Sports Time Cable Network, and have worked directly with all entities associated with college football this past fall.

While at NBC, it was my experience overseeing television ratings and how they relate to the industry. It was my observation, as it was for many, that television football ratings as presented by the NCAA plan, fell consistently during the late 1970's. They peaked from a top of a 14 national Nielsen rating, and they dropped to about an 11.5 rating in the late seventies.

Obviously, there was concern from both ends of the spectrum—that is, the NCAA and ABC, which was the carrying network, the sole carrying network at that time. A number of reasons have been argued about the decline and fall of ratings during that time: Increased sports competition on the network, parity in college football. It has been mentioned previously by my colleages, the limitations imposed by the NCAA on conference and team appearance limitations imposed by the NCAA on conference and team appearance limitations, thereby eliminating potentially attractive games as the season progresses.

In my research I recall observing in late fall, during the latter part of the 1970's, that many outstanding games were not available for television because of these appearance limitations.

When the two-network plan was inaugurated in 1982—that is, CBS and ABC—it was thought that more games would be available and, therefore, more people would watch. Well, the aggregate or composite was such that more total viewers did watch college football; but the overall college ratings decreased from about an 11½ to approximately a 9.5 average rating for the two networks over the last 2 years.

Reasons for such decline were increased sports competition and a limited amount of cross-promotion a network could do for that particular game. By that I mean if CBS had an early telecast—that is, as was mentioned by Jim, in the early time period, say 12 to 3 east-

ern time—they would not promote a second telecast, but they would promote what they had on the network.

ABC, in turn, for example, if they had the late telecast would do similar justice to an early game, and not promote a national game that was on a competing network, but, rather, promote what they had on the air, whether it be an anthology program, or whatever the case may be.

Consequently, because of limited cross-promotion on doubleheader telecasts, viewing levels continued to decrease. Restrictions on team appearances were lifted to some degree, but still a number of attractive games did not make air. Specifically, a game in question I remember distinctly was the Texas-Oklahoma game a year ago in 1983. Because of appearance limitations for both schools, that game, which was an incredibly attractive attraction at the time, did not make air.

Obviously there was quite a bit of concern by both networks and the NCAA as to the decline in ratings. It was understood by all that exclusivity in time period was of paramount importance to the networks. And there was the dilemma of attractive teams. That is, limiting the number of appearances of the major powers would help overall exposure for other schools, but would potentially hurt overall ratings. Many people thought that by opening up the television ranks of college football, more attractive games would be on, and more money would be secured by all concerned. It's been my observation that for the last few months, this is not the case, and it's probably affected negatively the overall product.

When the Supreme Court ruling was handed down in early July, Sports Time, our cable service, became involved in finalizing two contracts we had conditionally. They were with the Mid-America Conference and the Missouri Valley Conference. Limited dollars were paid to both conferences for their games, and the schedule was put together.

To add to our existing schedule of MAC and Missouri Valley games, negotiations were started in July and August for the Big Ten and with various syndicators to try to get an exclusive product into the Sports Time region, which is a paid cable service, as Tom has mentioned, throughout the Midwest. We were able to acquire the rights to the following conferences on a game-of-the-week basis: The Southwest Conference on a delayed basis; Big Eight game of the week on a delayed basis; a number of eastern independents and the University of Miami, both as a live or tape-delayed basis. Additionally, a deal was constructed with the Big Ten to air six telecasts exclusively in the Sports Time region during this past fall. The last game we did was last Saturday night's Iowa-Minnesota game.

In all, we put together a 75-game schedule of both live and taped football telecasts. Of the total football telecasts, we aired 35 games live, the rest on tape delayed.

As the season progressed, I was able to ascertain the following observations:

For the networks, exclusivity of time period is absolutely imperative. My feeling is that ABC and CBS suffered to some degee in terms of the ratings because their packages were not completely exclusive in either the early window on Saturday or the late Satur-

day afternoon window. By being the only game on in years past, it maximized potential ratings. From their point of view, having on competing games hurt them significantly.

No. 2, ABC and ESPN structured their agreement with the CFA to have a 12-day selection process. By that I mean they were able to select CFA schools as it relates to their schedule, 12 days in advance. This helped the overall attractiveness of their schedule, but hurt severely the attractiveness of the syndicator packagers affected by their selections. In other words, the Big Eight package, as structured by CAT Sports, was limited by the situation. A number of times during the season, the Big Eight game of the week had to be changed because of this 12-day period, in which ABC or ESPN selected their games.

Not having a schedule locked in as the season started hurt both the credibility and advertising support of the syndicated package. Similarly, many stations thought about just cherry-picking selected games.

No. 3, the conference-structured deals with syndicators, in my opinion, did not garner the ratings projected. While rating reports obviously have not been completed for the season, it is my observation that because there were team appearance requirements for conferences in syndicated contracts, the most attractive games were still not on a week-to-week basis. By that I mean specific schools were given exposure when more attractive games may have been available. By having appearance requirements for a school, the better games were not on on a weekly basis. Therefore, viewers would switch to the more attractive games on a Saturday afternoon, among the five or six available.

No. 4, it was my observation that the production quality of football in general suffered severely as well. Because budgets were tight for everyone and in many cases dollars were short, syndicators and cable companies alike tried to save on cameras and production equipment, the technical coverage of games was nowhere near what it had been in the past.

Advertisers also suffered. Because so many games were available on both over-the-air and cable stations, viewers at home, especially if they had a remote switching device, would switch from game to game and never see a commercial. As many as five or six games were on at a time in the early afternoon time period, and three or four in the late afternoon time period—as was mentioned earlier, the 12 to 3 and 3 to 6 time periods, Central time. I'm sure it was possible to watch a total of six hours of football, and not see single commercial, if you really made your mind up.

Obviously, the asking price for rights will suffer in the future.

It should be interesting to observe the television network ratings, once they are completed in early December, and then look at the sweeps ratings for the over-the-air football telecasts for November throughout the Nation. We, as well, are going to do some coincidental surveys for our cable viewing.

My thought is that regular season college football quickly became what occurred to regular season college basketball. The number of games hurt the credibility of the overall product and limited potential overall ratings. What is beginning to happen in mid-November on a Saturday afternoon, with a total of 10 football

games on television, happened last February on a Saturday night when there were 10 or 12 basketball games available, especially if you had cable TV.

The thought is that without exclusivity for the networks, and without a structure available to regulate some control, no one really wins. I don't even think the fan does.

I think 1985 will be a shakeup year in which fewer games will be on and fewer syndicators will be involved. Thank you.

RATINGS ARE UP

Senator GRASSLEY. Thank you.

The first thing I'd like to do is establish a fact. Each of you said—or at least you two said that viewing is up, the ratings are up, right? More people are watching college football on television this fall than last fall?

Mr. HEDLUND. Right.

Senator GRASSLEY. You all said that?

Mr. LARDNER. Yes.

Senator GRASSLEY. Is that a combination of networks plus cable, or is network viewing down and overall up, because there's more viewing on cable?

Mr. HEDLUND. Senator Grassley, it's sort of in between. It's the viewing on the networks when they have their national game is down; the viewing on the local stations—and I'm not sure if cablecasting is counted in those numbers or not—but—and these local stations sometimes include our members; oftentimes they are ABC, NBC affiliates who have bought the rights in a local market for the Big Eight game of the week or the Big Ten game of the week, the University of Miami-Notre Dame game, or what have you, in the market. So it's more people are watching college football on television, but is is spread over more outlets. The cumulative rating is up, is the technical term for it.

Senator GRASSLEY. For any of the other panels, when they come up here, if there's any disagreement with that, I'd like to have each panel comment on it, maybe even without me asking, because I think it's important that we establish that.

Now, in that the major networks are not here today—we do have statements from two, as I indicated—you may find it difficult to comment on this, but do you feel the networks are committed to the maintenance of college football, and what about the view held by some that there should be no limits on the number of times certain schools should be allowed to appear?

Mr. GRAVES. I can't answer the question on the networks, and, Rex, I know you'd like to do a lot better job. I don't think there should be any limits on how many times a college football program appears, regardless of the outlet for that program.

Just to go back to the question of the University of Iowa, where regularly scheduled basketball games has been available to those of us who live in Iowa for a long time, the enthusiasm for the ball club and that team activity is greater than ever. And the same thing has happened this year, I believe, with football, where we are regularly able to view the football program.

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Football really is a local or regional phenomenon. Even though everyone wants to see the Notre Dame-USC game, or the Nebraska-Oklahoma, what we're really interested in is that local or regional team, and I think there should be no limit on the outlets of those.

Mr. LARDNER. Senator, it's been my observation at the network that obviously it's a source of concern to the networks that they are severely limited in the number of appearances that a school can have. As I mentioned in my testimony, a number of attractive games are not on each year because of the appearance limitations, or had been in the past.

My feeling is that, as Tom had mentioned, and I agree, that there should not be any limitation. When you compare college football on television with other sports, there are no other limitations. There's no limitation on the number of times the Boston Celtics can be on, or the Detroit Tigers, for NBC's regular season of major league baseball package. There's no limitation on regular season college basketball as to the number of appearances if the networks and individual conferences or independents work it out; how many times DePaul or St. John's or Notre Dame or whomever, could be on.

So in that respect, it's really unfair. As Tom had mentioned, I think there's incredible grass-roots support, and from both points of view, I think the networks would want to put on the most attractive game, regardless of limitations on appearances, each week. And obviously in terms of regional support, it would help us as well as, I'm sure, commercial stations, to have the most attractive team in the area have an unlimited number of appearances.

Mr. HEDLUND. I think I basically would share that view, Senator. Our biggest concern about what the networks would like to do is simply have exclusive rights to college football. As I said before, we have no objections to any of the networks going and bidding for hot national games; and they're going to get them, no question about it. It is their desire to essentially be the only source of college football that is terribly upsetting to us, because our stations can't exist in that environment. And more than that, the fans aren't served, because the fans generally would prefer to see a game of more local interest than they would one of these big national games, or at least a significant enough share of the audience. To me, they have not been served in the past, and are finally beginning to be served under the new arrangement.

Senator GRASSLEY. What's your reaction, then, to the concern some colleges and universities have that the attendance will decrease their games?

Mr. HEDLUND. In terms of this being their own game, I would say we've always believed that a college ought to make its own decision. If the University of Iowa decides that televising their home game with Wisconsin, let's say, might hurt their home gate, then it might make a lot of sense for them to say, no, we don't want to telecast, or at least we certainly don't want to telecast in Iowa. If somebody wants to bring the game back to Wisconsin, that's fine, but at least not in our area. That's a decision they have to make.

I don't know what the right answer to that is in every situation. It's something they've got to juggle, perhaps losing some live-gate attendance versus revenues from the television package.

Senator GRASSLEY. Any other comments on that?

Mr. GRAVES. I'd just say that we should take a look at the University of Iowa, where they considered a live college basketball program a few years ago and were concerned about attendance. Since then, they've continued to sell out a new, bigger area. I still haven't been able to get a ticket to a game when I wanted one. And Kinnick Stadium was sold out when the team was 2 and 9, and it's still sold out today when we have a good football program that is telecast all over Iowa. I don't think a good football program or basketball program is hurt by the television rights, but, as Jim points out, if it is, they don't have to sell the rights to the ball game.

Mr. LARDNER. Senator, I'd just like to make a quick observation. From my point of view—I agree with both of my colleagues—but an interesting point of view from our situation, we've been working with a number of baseball teams, hockey, and soccer teams, and the essence of home telecasts, and our point of view from a pay cable service, or basically a pay cable service, is that we can work with the individual institutions, colleges, conference, teams, and help cross-promote, so that they may help better their home attendance.

It's interesting, we've done home games of the Cardinals, Reds and Kansas City Royals, three baseball teams, and all three clubs were reluctant to let us have the rights to do pay cable telecasts of home games. But what has happened is, we have worked with them in terms of crosspromoting, helping the product, trying to tell them there's a differentiation between commercial, over-the-air and pay cable, and it has actually helped the product.

Senator GRASSLEY. I guess I said universities and colleges. What I suppose I should have concentrated my question on is the smaller colleges, or possibly the colleges generally. The fact that the University of Iowa could have something televised that could hurt attendance here at UNI, as an example, or at Wartburg. And we're going to hear from each one of those schools.

But I guess the bottom line is, do you have any sympathy for that argument?

Mr. HEDLUND. I do have sympathy, but let me try to put it in this sense; that if people were to stay at home and watch a bigger, better-known school on television instead of going to their local game, presumably then the market is meeting their desires. However, I do sympathize with some of the smaller schools, the division II and III schools, some of the division IAA schools, who were getting a share of the television revenues under the old arrangement that the Supreme Court struck down, and are now getting less, perhaps nothing.

As far as I'm concerned—this is more of a personal observation—as long as the market for television rights remains free and open, or becomes free and open, assuming our antitrust suits are successful, we have no objections to the individual colleges getting together and having some revenue sharing arrangement, not unlike the National Football League currently does, where each of its member

teams gets exactly the same amount of money from television as any other. So that the teams in New York and Los Angeles, the two biggest media markets in the country, do not get substantially more money than the Green Bay Packers do, up in the 45th television market, if I remember my numbers properly.

So it seems to me—I do share concern for the smaller schools who aren't nationally known, do not have a great television appeal on even a regional basis, that some of their programs may be hurt. but it seems to me the answer to that is not to subvert the antitrust laws, but it's to allow the colleges, through perhaps the NCAA, to perhaps come up with some sort of revenue sharing package, which is really what they had before. In other words, granted the NCAA package forced the networks to televise more different teams than they might have been inclined to, but they also took some of the payment money off the top to spread around to the other schools. It seems to me that the colleges could still continue to do some arrangement like that that isn't inconsistent with a free open market in television rights.

Senator GRASSLEY. One last question. I'd like to have you comment on CFA's restrictions vis-a-vis the NCAA's restrictions, and do any of you have plans to broadcast division IAA, division II, or division III games or championships?

Mr. LARDNER. Senator, no, we do not. As a pay cable service, we're not going to be doing any of the smaller college championship games or playoffs. We did, however, do a number of smaller school games during the course of the season—the Mid-America game of the week and Missouri Valley game of the week—and it was interesting to note that I think you have the dilemma of a situation where conferences may think that it may hurt their overall gate if you televise, but they would also like the exposure that it gives. In other words, it helps recruiting. The football coaches I'm sure will tell you that having exposure on the air will really be beneficial in itself. I think the restrictive time periods of the CFA just severely limited everything else that was on. It hurt us, I know, that we could not televise a game during the restricted time periods of the CFA, and I think syndicators and networks alike also.

Mr. GRAVES. Senator, cable television is a local television outlet, and one of the things we do in cable systems throughout Iowa is provide high school football games, live and away, replays or live. And we intend to carry football on all levels, and I think in the future we will be cablecasting division IIA and division—I don't know the rest of the divisions—division II schools. We think that opportunity is a booster for those schools, as well as for us.

Senator GRASSLEY. Is that profitable for you?

Mr. GRAVES. It's profitable in the same way that the high school games are. We think it increases the programming available to our customers, and that they enjoy it. We do not, cannot, make a profit off one of those games on an advertising basis.

Mr. HEDLUND. Senator, some of our stations this year have carried some of the smaller schools' games. I can't quantify it, because we don't have a definite list. I must say one of the problems, and I'm sympathetic to this, with the smaller schools, is simply that there's sort of a fixed amount which it costs to produce the game;

in other words, the cameras, the commentators, to get the signal out of the stadium back to your television studio. And you need schools that have enough appeal locally—and generally, what it also means, unless you're dealing in very big markets like New York or Los Angeles, a number of television stations, and a syndicator, really, who does the job, producing the show and sending it out, I think it is frankly less likely that there's going to be a lot of exposure of the smaller schools, just because it's going to cost as much to telecast a division II game as it is Oklahoma-Nebraska.

Senator GRASSLEY. Before I thank you and call the next panel, is there anything any of the three of you want to add?

OK. Well, thank you very much.

Let me suggest that if you're interested in this printed testimony, I think it's several months, I'm sorry to say, like maybe 2 or 3 months down the road, but if any of the participants or anybody in the audience wants such a printed record, you can contact my office and we'll get it for you.

Without objection, the printed statements of Mr. Arthur Watson, president, NBC Sports and Mr. Neal H. Pilson, executive vice president, CBS Broadcast Group, will be inserted into the record at this point.

[Material referred to follows:]

STATEMENT OF ARTHUR WATSON

I am Arthur Watson, President of NBC Sports. I appreciate this opportunity to discuss the future of televising college football in light of the developments arising from the Supreme Court's NCAA football antitrust decision.

NBC recognizes the status of college football as a special American institution. NBC Sports has long held and continues to have an interest in broadcasting this special institution to our viewers. Indeed, were it not for the timing of the Supreme Court's decision, NBC might well be a rights purchaser rather than a potential bidder for college football in the near future.

NBC Sports was not an active bidder for 1984 college football rights. Because of our prior commitments to Major League Baseball, including the 1984 World Series, and substantial investments in prime time programming for the fall season, NBC Sports was forced to stand to the side while the shape of college football television in 1984 took form. It is from this unique vantage point that we appear today.

One thing is certain, 1984 is a year of uncertainty. For universities, broadcasters, networks, advertisers, and the public, the Supreme Court's decision could not have come at a worse time. Coming so close, in television terms, to the beginning of the college football season, it has spawned hasty arrangements the results of which I am sure are most disappointing for most of the parties involved. In the next few months, all of the interested parties should be examining the Supreme Court's decision, Judge Burciaga's recent clarification of the decision, and the emerging realities of their effects to chart the course of college football's television future. It is our belief that a voluntary "umbrella" organization or system would serve to assist individual universities and conferences with the coordination of scheduling, television rights negotiations, and review of network, regional and local television plans. We believe that the schools may conclude that such a concept is worthy of serious exploration.

Finally, let me say again that college football is a special American institution. For NBC Sports, our participation in this hearing today and in the marketplace tomorrow is dedicated to making that special institution's future as bright as its past.

CBS BROADCAST GROUP
CBS Television Network CBS Entertainment CBS Sports CBS News CBS Television Stations CBS Radio
CBS Inc. 51 West 52 Street New York, New York 10019 (212) 975-4321

BEFORE THE UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

Statement by NEAL H. PILSON,
Executive Vice-President
CBS Broadcast Group

November 19, 1984

I am pleased to offer this statement to this Committee on behalf of CBS to address some of the issues raised by the United States Supreme Court decision in National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma.

On July 31 I appeared before the Subcommittee On Oversight And Investigations Of The House Committee On Energy And Commerce and addressed from a prospective viewpoint the application of the NCAA decision. I attach a copy of my statement before that Subcommittee for your information. Today, after almost a full season in the competitive marketplace for the broadcast rights to college football, we are better able to assess some of the demonstrated effects of this decision.

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As this Committee is well aware, the Supreme Court decision invalidating the NCAA plan ended the NCAA's 32 year exclusive control of the television broadcast rights to college football games. The decision began a new era in which individual schools and conferences are free to sell their broadcast rights to any willing buyer in any of the numerous competing communications media.

The immediate effect of this new economic order is apparent on just about any Saturday in just about any market in the country - there has been a startling increase in the number of college football games available to the viewer. In CBS Sports' home market of New York, there have been as many as eight games available on certain Saturdays. The list, attached to my earlier statement, of those packagers and networks which have actually offered games for broadcast this season clearly attests to the strong demand for college football games. In 1984 the American television viewer has had an unprecedented choice of college football games to watch.

Several witnesses appearing before the July 31 hearing spoke about the 1984 football season as being highly irregular as far as the television coverage of

games. This irregularity was caused not only by the Supreme Court decision, but also by the timing of that decision, about two months before the start of the 1984 football season. The 1985 season should, we think, be less unsettled in that broadcasters and colleges have survived a season under a fully competitive market and there should be no late shocks such as the NCAA decision. Based on our experience so far this season, CBS expects to continue its coverage of college football during 1985.

There are, however, some major issues which need to be addressed in order to enhance the prospects for a truly competitive marketplace in 1985. Foremost among these issues is the question of crossover games, or games involving a team from the College Football Association and a team from the Big 10 or Pac 10 Conferences. As this Committee is no doubt aware, this issue led to litigation in California which, I am happy to report, will result in the broadcast of this Saturday's Notre Dame at USC game by CBS. Unfortunately, the remedy granted by the court in this case is only a preliminary injunction with respect to certain specific football games -- the larger issue of the control of the broadcast rights to crossover football games is still unresolved. This unfortunate situation

reduces the supply of available games. CBS has consistently urged the continuation of the "home team control" standard as the best remedy to this situation. However, this is an issue which only the football playing colleges can resolve.

In addition, current news reports indicate that there appears to be a growing sentiment among the major football playing schools which would seek to impose limitations on the supply of available games. This would increase the price paid for the broadcast rights to any particular game. While Judge Burciaga recently pronounced that the NCAA may return to the business of selling broadcast rights to college football games, he has done so with the caveat that such participation may only be in the open and competitive television market. As I suggested in my remarks of July 31, and apparently in the view of Judge Burciaga, the marketplace for college football broadcast rights could evolve into a marketplace similar to college basketball, where numerous buyers and sellers vigorously compete for games, viewers and advertising revenues. In such a market, the preference of the consumer can be effectively satisfied.

Our view is that consumer preference is becoming the major factor in the economics of college football. This is clearly required by the antitrust laws as interpreted by the Supreme Court and we trust that broadcasters will continue offering the diverse selection of viewing choices which we have seen in 1984.

CBS BROADCAST GROUP

CBS Television Network, CBS Entertainment, CBS Sports, CBS News
CBS Television Stations, CBS Radio, CBS Theatrical Films, CBS Operations and Engineering
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BEFORE THE SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS OF THE
HOUSE COMMITTEE ON ENERGY AND COMMERCE

Statement by NEAL H. PILSON,
Executive Vice-President,
CBS Broadcast Group

July 31, 1984

I appreciate this opportunity to meet with you today to discuss intercollegiate football and the broadcast of that sport during the 1984 season and beyond.

As you know, the Supreme Court decision of June 27 invalidated the NCAA Television Plan and the contracts with ABC, CBS and WTBS. This ended the NCAA's 32 year reign as the exclusive grantor of television broadcast rights to college football games. During that period, the number of television appearances of NCAA member schools

was strictly controlled by the NCAA. The decision marks the beginning of an era where individual schools and conferences are free to offer the television broadcast rights to their games to a variety of communications media - over-the-air networks, over-the-air stations, regional networks, cable networks, even pay-per-view. The spectrum of existing communications media is available to any college or university willing to sell the telecast rights which it controls.

CBS' obligation as a broadcaster is to provide the highest possible quality program service to the greatest number of American viewers. In furtherance of that responsibility, CBS identified its role in this new marketplace and stated its interest in broadcasting a limited number of nationally attractive football games. Our rationale was that we needed to differentiate our games from those of the numerous syndicators, local stations and other packagers who would be entering the field. We envisioned a marketplace (as did the Supreme Court in the NCAA case) similar to that which prevails for college basketball games, where individual schools and conferences sell the broadcast rights to their games to any of a variety of telecast entities. We are active

participants in the college basketball marketplace and remain willing to compete against any broadcaster or cablecaster in that environment.

Events since the Supreme Court's decision have, in large part, borne out the accuracy of our expectation of the market for television rights. I have attached to this statement a list of the packagers which have entered into agreements to broadcast or cablecast college football games in the upcoming season. This data would certainly indicate a robust demand for these games and we are confident that in 1984 more college football games will be available, and more viewers will watch college football, than ever before in the history of the sport.

Our broadcast schedule for the 1984 season will be built around the Big 10 and Pac 10 conferences. How this came about is a matter which might interest this committee.

After the Supreme Court decision, we were invited to attend hearings held by the NCAA in Chicago on June 30, 1984 and offered our comments with respect to a television plan for Division I colleges and universities which the NCAA might design which would allow for free market competition and pass muster under the Supreme Court

decision. Following the hearing, the NCAA proposed a plan which contained three "windows" or time periods during which football games would be broadcast. One of these time periods would have been set aside for competitive network broadcasts, another for syndicators and the third (during the evening) for cable and syndicators. During the network window, full competition was contemplated i.e., buyers and sellers would freely negotiate the terms and conditions, including price, applicable to the sale of the television broadcast rights. Exclusivity would be granted only with respect to the game purchased. The network broadcasters would then compete for sponsorship commitments and viewers. That plan was voted down by the NCAA Division I membership.

After the failure of this NCAA proposal, the remaining forces in the Division I college football marketplace were, and continue to be, two groups: the College Football Association, or CFA, and the Big 10/Pac 10 conferences. We negotiated with both parties in an attempt to satisfy our limited programming needs. Of the two, only the Big 10 and Pac 10 were willing to deal on the limited basis we sought. The package offered by the CFA was far larger than we were able to accommodate,

calling for 33 to 50 game telecasts in 14 to 20 exposures and only in the late afternoon time period. The CFA rejected our offer to acquire broadcast rights to a limited number of games. In order to protect our interests and to remain consistent with our market strategy outlined above, we entered into an agreement with the Big 10 and Pac 10 granting us the right to 10 exposures, comprised of 14 games during the upcoming season, both in the early and late time periods. As originally agreed with the Big 10 and Pac 10, CBS would only have had a "first claim" position with respect to the Big 10 and Pac 10 schedules, not an exclusive position. The Big 10 and Pac 10 anticipated selling rights to other games in their schedules to other network broadcasters and CBS still hoped to acquire rights to games between CFA members not chosen by any other network. Since both CBS and the Big 10 and Pac 10 were disappointed in their efforts to acquire, or sell, respectively, these additional rights, we have expanded our schedule of exposures to 12 and our relationship with the Big 10 and Pac 10 is now on an exclusive basis.

For the benefit of this subcommittee, I have attached a copy of our anticipated broadcast schedule for the 1984 college football season.

This marketplace has given rise to a new controversy, that of the "cross-over" game, (a game involving a CFA member and a Big 10 or Pac 10 member). We originally had 3 such cross-over games on our broadcast schedule where the CFA member plays in the home stadium of the Big 10 and Pac 10 member. As of this date, a controversy exists as to which network broadcaster, if any, will have the rights to these games. Historically, the negotiation rights to sports events have been controlled by the home team and our schedule was prepared with that experience in mind. We trust that the academic institutions involved will reach an agreement along these lines in the near future.

In closing, it is clear to us that the result of the Supreme Court's decision will be a more freely competitive market which will better serve the American television viewer. That viewer will be offered a greater and more diverse sample of college football games than he has ever been offered before.

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SCHEDULE OF REPORTED COLLEGE FOOTBALL
BROADCAST AGREEMENTS

1984*

Network/Syndicator	Licensor	Games
ABC	College Football Association	20
CBS	Big 10/Pacific 10 Conferences	15
	Army vs. Navy	1
	Boston College vs. Miami (Fla.)	1
ESPN	College Football Association	15
Jefferson Productions	Atlantic Coast Conference	12
Katz Communications	Big Eight Conference	11-14
	Eastern Independents (Boston College/Pittsburgh/Syracuse Miami)	15
TCS/Metro Sports	Big 10 Conference	12-15
	Notre Dame	4
	Pacific 10 Conference	12-15
	Penn State	3
Raycom	Southwest Conference	8
SportsTime	Missouri Valley Conference	8-12
	Mid-American Conference	8-12
WTBS	Southeastern Conference	12-14
Public Broadcasting	Ivy League	8

1983

Network/Syndicator	Licensor	Games
ABC	National Collegiate Athletic Association	35
CBS	National Collegiate Athletic Association	35
WTBS	National Collegiate Athletic Association	19

*As of July 30, 1984

CBS SPORTS

CBS SPORTS WORKING 1984 COLLEGE FOOTBALL SCHEDULE

DATE	GAME	TIME ET (Pacific Time–PT)	COVERAGE
Sept. 15	Washington at Michigan	12:00 NOON	National
Sept. 22	Nebraska at UCLA or Iowa at Ohio State	3:30 PM	National
Sept. 29	Illinois at Iowa	12:00 NOON	National
Oct. 13	Illinois at Ohio State and Washington at Stanford	TBA TBA	Split National
Oct. 20	• Michigan at Iowa UCLA at California	12:00 NOON 3:30 PM	National National
Oct. 27	Illinois at Michigan or Ohio State at Wisconsin and UCLA at Arizona State	12:00 NOON 3:00 PM, PT	Split National
Nov. 3	Michigan at Purdue or Wisconsin at Iowa and USC at Stanford	12:00 NOON 3:00 PM, PT	Split National
Nov. 10	Washington at USC	3:30 PM	National
Nov. 17	• Michigan at Ohio State USC at UCLA	12:00 NOON 3:30 PM	National National
Nov. 23	Boston College at Miami	2:30 PM	National
Nov. 24	TBA	3:30 PM	National
Dec. 1	Army vs. Navy at Philadelphia	12:00 NOON	National

• Indicates CBS Sports Doubleheader

Senator GRASSLEY. Now I'd like to call Dr. Ade Sponberg and Mr. Richard Snider. These folks were supposed to be our first panel.

Dr. Sponberg is vice president of the NCAA Division II. He's also athletic director at North Dakota State University, and obviously people that follow football know that that team is currently champion of the Northcentral Conference. Dr. Sponberg has been at North Dakota State for 12 years.

Mr. Richard Snider, who is director of communications for the College Football Association, was previously administrator of President Kennedy's physical fitness program, and he was executive producer of NCAA films.

So I would ask you to proceed in the matter in which I introduced you. Dr. Sponberg.

STATEMENTS OF PANEL CONSISTING OF: DR. ADE L. SPONBERG, VICE PRESIDENT, DIVISION II, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION [NCAA] AND ATHLETIC DIRECTOR, NORTH DAKOTA STATE UNIVERSITY, AND MR. RICHARD S. SNIDER, DIRECTOR OF COMMUNICATIONS, COLLEGE FOOTBALL ASSOCIATION [CFA]

Dr. SPONBERG. Thank you, Senator. It's my pleasure to be here today, and I'm happy to provide whatever insight I may on the subject of the Supreme Court case brought against the NCAA by Oklahoma and Georgia.

You have before you a statement for the record. Allow me, in this brief period, to highlight some of the pertinent issues that are related to this statement.

NCAA has maintained control of member institution football telecasting since 1952, when the first television plan was put in place. For 32 years the membership supported plans that had three basic objectives:

First, to protect in-stadium attendance; second, to spread television appearances; and third, to provide football television to the public to the extent compatible with the two previous objectives.

It was the second objective, to spread television among as many NCAA members as possible, that was the principal virtue of the plans, and the ultimate source of their destruction.

The income derived from football gate receipts is the lifeblood of nearly all college athletic programs. The first objective, to protect in-stadium attendance, was the single principle that remained constant, from 1952 until the present.

Unregulated television in college football will destroy the revenue source and the spinoff benefits that are needed to maintain the program for athletics, as well as ultimately the institution.

In my opinion, the football television plans managed the in-stadium attendance problem very well. Almost coincidentally, the limited exposure of college football became very valuable to the member institutions, as the rights fees grew to staggering amounts because of their value as television entertainment. Understand that the restriction of college television was designed to protect in-stadium attendance, and not to drive up the rights fees.

As this value rose, the NCAA's assessment grew also. This assessment ranged from 12 percent to the current 4 percent of the

contract that was bid for by the networks. This income to the association was used to fund a variety of programs.

During the 1983 contract, the assessment was in excess of $5 million. One of the major beneficiaries of this money was the division II and III championships. Prior to 1984–85, the association provided the transportation for all championship participants, primarily because of this television revenue. In 1985–86, the individual team championships that do not show a net return, will not be provided transportation. This includes wrestling, swimming, golf, tennis, et cetera.

Another benefit of the NCAA television plan was the provision of TV coverage for the division IAA, II and III football championship series. In 1983, the division II semifinal and championship games were aired. The rights fees were $527,000. North Dakota State University's football team won the championship. Without the television plan, we may have to provide the bulk of our per diem. We are in this playoff again, and I may have to scramble for the necessary funds to make it possible for us, if we happen to win again on Saturday.

The irony is that without the television plans, these games in divisions IAA and II and III are not marketable. We need the network contract to generate the television exposure for those of us below division IA.

Finally, the voiding of the 1982–85 television plan, and the resultant reduction in association revenue, may disrupt the plan to provide a truly equal opportunity in intercollegiate athletics.

In 1985, and for most programs before that, a true women's championship in all sponsored sports has been provided. Without the television assessment and the corresponding transportation subsidies, there will be inequities between the men's and women's programs and among sports on our campus.

Aside from these issues in Division II, the television plan as we knew it, accomplished two things: The distribution of both exposure and revenue among the membership. Both are necessary to maintain a competitive balance. Without adequate control, this will be lost, and with it will go many of the competitive opportunities that we are currently enjoying in intercollegiate athletics.

Thank you.

[The complete statement follows:]

STATEMENT OF ADE L. SPONBERG
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
BEFORE
THE SUBCOMMITTEE ON ADMINISTRATIVE PRACTICES
AND PROCEDURES
COMMITTEE ON THE JUDICIARY
U.S. SENATE
November 19, 1984

My name is Ade L. Sponberg. I am the current Division II Vice President of the National Collegiate Athletic Association and a member of the NCAA Football Television Committee. The NCAA in an unincorporated voluntary association of some 970 four-year colleges and universities and allied members, having its headquarters at Mission, Kansas.

I am also Director of Athletics at North Dakota State University.

As stated in Section 1 of our Constitution, a major purpose of the NCAA is to initiate, stimulate and improve intercollegiate athletic programs for student-athletes. The fundamental policy of the NCAA is stated in Section 2 of the Constitution, as follows:

> "The competitive athletic programs of the colleges are designed to be a vital part of the educational system. A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between college athletics and professional sports."

As we understand the purpose of these hearings, it is to assess the impact of the recent Supreme Court affirmance of the decision of Federal Judge Juan C. Burciaga -- holding that the NCAA's most recent football television plan violated the Sherman Act -- on the market for televising college football games and, at least incidentally, on the member NCAA institutions and on the sport of intercollegiate football itself. We are happy to provide whatever insights we can on those subjects.

It would perhaps be most helpful to the Subcommittee if I first outlined the history of the successive NCAA television plans and gave you some idea of the income generated under those plans to NCAA members. I would then briefly like to discuss what has transpired since the Supreme Court handed down its decision.

A. History of the NCAA Television Plan

College football television began in 1938, when one of the University of Pennsylvania's games was beamed from Franklin Field to Philco offices-laboratories, also in Philadelphia. As far as is known, there were six television sets in Philadelphia; and all were tuned to the game.

Ten years later, discussion of television began occupying a great deal of time at NCAA Conventions. The major issue was the adverse effect that televising could have on in-stadium attendance. Early television had little effect because signals could be beamed only to local areas, and there were few receiving sets.

There were only 7,000 sets in use nationwide in January 1947. By 1955, there were an estimated 30,000,000 sets. Currently, there are 84.9 million television households (98 percent of the nation's homes are equipped with one or more television sets).

The concern for in-stadium attendance became an area of major interest and concern to the Association during the late 1940s. Three studies were reviewed prior to establishment of the first television plan in 1952, all examining the effects of television on attendance:

1. The 1949 Convention received a report from Crossley, Incorporated, of New York. The report measured only four Eastern cities and thus was not fully representative; however, it did indicate a relationship between nonattendance and interest in television. A portion of the study that specifically measured nonattendance noted that 21.8 percent of the television viewers questioned did not attend a game because they preferred to watch the event of television.

2. In 1952, a survey was conducted by Jerry N. Jordan of the University of Pennsylvania. His analysis indicated that college football had made "a remarkable record in attendance over the past four years" but that colleges in television areas had not fared as well during that period as those in nontelevision areas.

3. The National Opinion Research Center (NORC) was commissioned by the NCAA to conduct a nationwide survey concerning the impact of television upon attendance. A preliminary report to the 1951 Conven-

> tion showed that during the 1949 and 1950 seasons, college football attendance had declined by 3.5 percent. Attendance for colleges in television areas had dropped six percent, while those outside television areas experienced a 2.5 percent increase.

The NORC's final report for 1952, released on April 8, 1953, verified that live telecasting of college football games again damaged the gate in 1952 and that this harm was reduced appreciably by the NCAA's exercise of control over telecasting. Of particular interest was the fact that in areas where there was no television competition in 1952, paid admissions were 10.5 percent better than in the pre-TV years 1947-48; but where television competition was present, attendance was down 16.2 percent.

That NORC report was the beginning of a continuing documentation of damage caused to in-stadium attendance by television of live events. The NCAA television Committee at that time found some indications that attendance was higher on blackout Saturdays than when a game was televised, but was "unable to find these differences consistently enough or to a large enough degree to prove the matter mathematically." Several examples of apparent attendance damage were cited, including a Mid-American Conference game between Miami (Ohio) and Cincinnati, to decide the conference championship. Normal attendance for the game had been 30,000; in 1951, it was played the same date the Michigan/Ohio State game was telecast in the Cincinnati area, and attendance dropped to 16,000.

In addition, at the 1951 Convention, Reaves Peters of the Big Seven Conference (now Big Eight) reported that the University of Oklahoma had suffered a drop in ticket sales in Oklahoma City of 15,000 per year in 1949 and 1950 and attributed the decline to televising of its football games.[1]

1/ Efforts to document attendance damage since 1951 have followed the specific example approach. Quite recently, for example, the NCAA documented apparent damage to in-stadium attendance in Columbus, Ohio, related to Warner Cable (Qube) telecasts of Ohio State football games during 1978 and 1979. A study of responses viewers gave during these cablecasts to the question, "Would you have attended another college football game if this game has not been televised?" indicated that 1,138 spectators per weekend in the Columbus area (of an average Qube viewing audience of 21,500) were lost to college football because of the Ohio State cablecasts.

Evolution of the plans. The 1951 Convention approved a moratorium on televised college football games in 1951, increased the Television Committee's membership from three persons to six, and directed the Committee to develop a plan whereby the televising of college football games could be controlled.

The plan, submitted to the 46th annual Convention, January 10-12, 1952, established the machinery by which NCAA-controlled television could be implemented. The 1952 season marked the beginning of the program that served the interests of college football for over 30 years. The 1952 Plan contained the following primary objectives and purposes, which remained the guiding principles for the Television Committee until the voiding of the Association's most recent plan:

1. To reduce, insofar as possible, the adverse effects of live television upon football game attendance and, in turn, upon the athletic and education programs dependent upon that football attendance;

2. To spread television among as many NCAA member colleges as possible; and

3. To provide football television to the public to the extent compatible with the other two objectives.

After a year of operation, the Television Committee added an important fourth objective: "To strive for enduring principles appropriate for utilization in television plans for future years." As noted, succeeding plans have shared the same objectives: For the Subcommittee's purposes, however, I suggest at this point that it was the second objective -- to spread television among as many NCAA members as possible -- which, as revenues from the successive plans grew to staggering figures, ultimately proved to be both the principal virtue of the plans and the source of their destruction.

The National Broadcasting Company (NBC) was the original carrying network of NCAA football, telecasting 12 national games in 1952 and a package in 1953 that involved 11 national games and eight regional presentations on two dates. In those two years and in the 1954 contract with the American Broadcasting Company (ABC), a team was permitted one appearance per year on the

series. This appearance limitation, I suggest to you, was the feature of the original plan and albeit more liberal successive plans, which eventually led to deep divisions between some of the more aggressive CFA members and the balance of the NCAA Division I-A football-playing membership, and was the proximate cause of the litigation with which the Subcommittee is concerned today.

In 1955, the Association's series moved back to NBC for the start of a five-year relationship. The appearance limit was raised to two per year, and that remained basic rule for the next 25 years. The 1955 contract also saw the beginnings of a new kind of regional package. Limited regional televising had been included in the 1953 and 1954 seasons, but the 1955 arrangement expanded the regional presentations to five dates. In addition, the format basically permitted each region of the country to determine its own regional package for those dates, rather than the system used today whereby the carrying network selects and produces the regional telecasts. One effect of this new regional philosophy was the televising of college football on more than one network in some parts of the country. The "independent" regional system remained in effect through 1959, varying from three to five Saturdays per year.

Beginning in 1960, the NCAA package began to take on more of the features included in today's telecasts. ABC was the carrying network, and the series included nine national and four regional exposures. For the first time, the rights for the series surpassed $3 million ($3,125,000).

The character of the series changed again in 1964 when NBC began a two-year contract. At that time, the number of games within each regional exposure was increased to four, which resulted in a rise in the number of teams appearing on the series. Generally, about 35 different institutions had been appearing each year; with the new arrangement, approximately 50 appeared each season. That number remained relatively constant through 1977, even though the number of national telecasts in the package climbed from eight to 13.

In 1966, ABC again took over as the carrying network,

beginning a relationship that has extended through the current contract -- although ABC began sharing its rights with CBS in 1982. ABC's most recent contract, prior to the 1982-85 contract, started with the 1978 season and marked a new course. It was the first four-year pact; in addition, there was a 15 percent increase in the number of telecasts, from 20 to 23 (13 national, 10 regional), and the number of annual team appearances increased 41.5 percent. The number of games within each regional presentation also was increased, with 45 games being required among the 10 regional exposures. That 4.5 ratio was the largest in the history of the series.

In 1982, ABC and CBS were awarded a four-year contract for the over-the-air rights extending through 1985. At the same time, the NCAA began to experiment with a supplemental cable series at night, with a two-year agreement with Turner Broadcasting System. The supplemental series was developed primarily for institutions that received limited or no television opportunities on the network series. Rights to these cablecasts were awarded to ESPN for the 1984 and 1985 seasons.

Revenues. Corresponding with the growth in telecasts has been a greater growth in the financial aspect of the series. The initial NBC contract provided a rights fee of $1,144,000, and through the 1950s the value of the package remained under or near $2 million. In 1960, however, ABC provided an agreement worth $3,125,000 per year, a 41 percent increase from the 1959 NBC agreement. In 1962, CBS paid $5,100,000 for the rights, a gain of more than 63 percent. The next three contracts saw increases to $6,522,000, $7,800,000 and $10,200,000. Thus, by the end of the decade, the value of the NCAA football contract stood 226 percent higher than in 1960.

The financial gains continued throughout the 1970s. ABC paid $18 million per year for the 1976 and 1977 rights; in the 1978 agreements, the fee jumped to $29 million per year for the first two years and $31 million per year the second two years, due in no small part to the increased number of telecasts and the resultant increase in salable commercial time.

Within the $31 million, a total of $750,000 was paid for the Division I-AA football championship television rights, $520,000 for the Division II football championship and $150,000 for television rights to the Division III football championship. In addition, institutions that appeared on the Divisions II and III regular-season telecasts collected $165,000; while the rights fees for five NCAA championships televised by ABC totaled $250,000.

In the next section of this statement, beginning on page 12, I will discuss in greater detail the features and financial aspects of the now-voided 1982-85 plan, for the two-year period that plan remained in effect.

NCAA Assessment. The first NCAA assessment on the Series rights fees in 1952 was 12 percent; after declining to seven percent in 1953, it fluctuated between four and one-half and six percent over the next 13 years. It was 7 percent in 1982 and 1983, and a major portion of the funds realized went to pay transportation costs for all student-athletes participating in NCAA championships. The basic assessment on the series rights fees would have been 6.5 percent in 1984 and would have been 6 percent in 1985. The assessment has at various times funded the NCAA postgraduate scholarship program (90 scholarships in 1983, with a minimum of 25 for Divisions II and III), football promotion, television administration, sports development and general administration -- as well as most recently student-athlete travel for NCAA championships. As will be discussed below, Divisions I-A and I-AA voted last July an assessment of four percent for the 1984 season.

Attendance. As mentioned earlier, stadium attendance was one of the big concerns at the time controlled football television first was being considered. Several institutions had reported drops in attendance during the period of uncontrolled television.

In 1950, college football attendance stood at 19 million persons nationwide. That figure was down 3.51 percent from the previous year; and the attendance drop continued in 1951, the year NCAA members placed a moratorium on college football television.

Controlled television did not bring about an immediate reversal in this trend, with attendance declining to 17.3 million in 1952 (the first year of the plan) and finally to 16.7 million in 1953. Beginning in 1954, though, national attendance started to climb, first by 2.20 percent to 17 million. Since that first increase 27 years ago, college football attendance has more than doubled, to an all-time high of 36.5 million during the 1982 season. There have been only two seasons in the past decade in which total attendance dropped from the previous year, 1974 and 1983. The per-game average in 1983 for Division I-A did increase, however, and the Big Ten, Southeastern and Atlantic Coast Conferences, and the Southern Independents, enjoyed record attendance years.

In addition to the revenue generated by the series, NCAA member institutions rely heavily on income from ticket sales for home football games. It already has been documented that college football attendance was in 1983 essentially at an all-time high; with that increase in fans has come a corresponding gain in dollars generated from ticket sales, a primary objective of the NCAA television controls since the adoption of the first plan.

B. The 1982-85 Plan

The most recent NCAA television plan, at issue in the Supreme Court, was approved by the NCAA membership in May 1981 by a vote of 220 to 6, with 28 abstentions (the vote in Division I-A was 60 to 1, with 26 abstentions). A substantial majority of the members of the College Football Association voted in favor of the plan. Under the plan, the NCAA negotiated separate agreements with two networks, ABC and CBS, and granted each network the right to televise 14 live exposures annually for a period of four years in exchange for rights fees totalling $263,500,000 -- $131,750,000 from each network. Each network was authorized to

negotiate with NCAA member institutions for the right to televise their games, with the networks making alternate selections of the games they wished to televise.

In each of the two-year periods the plan was to be in effect, each network annually was required to schedule a minimum of 35 games that would include at least 82 different member institutions. No member institution was permitted to be scheduled by the networks more than six times (four times nationally) during each two-year cycle. The networks also were required to schedule appearances in the series for each of the NCAA Division I-AA conferences over two years, and annually to broadcast the championship games for Divisions I-AA and II, and the final game of the Division III championship.

In 1982 and 1983, Division I-A members received an average of about $56.5 million each season, or about 82 percent of the available revenues, and members of the CFA and Big Ten/Pacific Ten respectively annually received $51.7 and $58.8 million. Rights fees for individual nationally-televised games were respectively $1.1 million in 1982 and $1.165 million in 1983. Regional exposures generated about $620,000 and $672,000 respectively. Program rights in the cable series were $350,000 in 1982 and $475,000 in 1983.

As noted, the 1982-85 plan proved most lucrative for those institutions which now comprise the College Football Association, as well as members of the Big Ten and Pacific-Ten conferences. CFA members received $36.7 million in 1982 and $44.2 million in 1983; Big Ten/Pacific-Ten institutions received $15 and $14.5 in those years respectively. Other Division I-A institutions, combined, received $2.1 million in 1982 and $0.3 million in 1983. The plan also proved attractive for Division I-AA, and to a lesser extent for Divisions II and III:

	1982	$ millions	1983
Division I-AA	$4.34		$7.74
I-AA Championship	1.10		1.23
Division II	0.27		0.27
II Championship	0.52		0.52
Division III	0.09		0.09
III Championship	0.15		0.15
	$6.47		$10.0

It is perhaps instructive to the Subcommittee to note at this point that none of these revenues to Divisions I-AA, II and III were provided for in the plans pursued for the 1984 season by t CFA and Big Ten/Pacific Ten. Institutions in those divisions have been left to fend for themselves; at a later point in this statement, I will try to assess what appears to have been the practical impact of the new marketing arrangements on these Divisions.

Due to revenue-sharing arrangements in most of the maj conferences, income from the series is spread among a substantia number of institutions. In 1982 and 1983, for example, the approximately $125 million paid by ABC and CBS to the 113 teams appearing on the two series actually was shared by 177 institutions.

In summary, there were more college games televised in 1983 than any previous year, and the 1982-1985 Plan demonstrated it contained the flexibility to handle a myriad of situations as the Association completed its first two-year cycle on its contracts with ABC and CBS and completed the first-ever contract for a Supplementary Series. The contracts with the three networks -- ABC, CBS and TBS -- provided 212 team-appearance opportunities for Division I-A and I-AA regular season, Divisions II and III regular season and Divisions I-AA, II and III championship games, for a record $76,068,000. The NCAA Television Committee effectively administered and approved a record number of applications for exception telecasts. Teams from a total of 173 institutions were televised in 1983 by the networks or on exception and other telecast opportunities available in the NCAA Football Television Plan for 1983.

During the first two years of contracts with ABC and CBS, each network televised games involving 78 different Division I-A and I-AA institutions. A combined 102 different institutions received network exposure and 12 additional teams that did not appear on network programming were cablecast by TBS.

C. Antitrust Considerations

On June 27 of this year, the Supreme Court, by a 7-2

vote, determined that the current NCAA plan violated the proscriptions of the Sherman Act. The Court held that the plan constituted improper horizontal price fixing of the rights fees to be paid for the televising of games covered by the plan and an improper limitation on "output," or the number of games that could be televised. Applying the so-called "Rule of Reason" approach -- by which the pro-competitive effects of a particular restrictive activity are balanced against its anti-competitive effects to determine whether the restrictions unreasonably restrain competition -- the Court on the basis of factual findings by Judge Burciaga rejected the NCAA's claims as to the pro-competitive effects of the plan and held the plan invalid.

It should be noted, however, that the Court specifically declined to strike down the plan on the more harsh "per se" analysis traditionally applied by the courts in cases involving alleged price-fixing and output limitation, and stated that a fair evaluation of the character of the restrictions "requires consideration of the NCAA's justification for these restraints." It thus applied the "Rule of Reason" approach.

Why is this significant to us? The answer is quite simple: Because since the earliest days of the NCAA's television plans, the NCAA has been aware of the possibility of a claim that the plan might be subjected to scrutiny under the antitrust laws, but has consistently been advised by counsel retained by it that, even if the antitrust laws were to be applied to the plan, the procompetitive purposes of the plan represented a sound basis for justifying the plan's restrictions.

Thus, in 1951, when the first plan was being formulated, the NCAA retained the services of a prominent Washington, D.C. attorney -- Joseph L. Rauh, Jr. -- to provide antitrust advice. Mr. Rauh advised the NCAA that in his opinion, reasonable controls on telecasting would not violate the antitrust laws and that the controls proposed by the NCAA were reasonable in law and in fact. The essential features of that plan were no different than those contained in the plan voided 30 years later by Judge Burciaga. The NCAA took the additional precaution of submitting

the plan to the Department of Justice. The Department took the plan under study but at no time did the Department formally inform the NCAA that it entertained doubts as to the legality of the plan.

Indeed, during all the early years of the plan, there existed serious question whether the plan was subject to scrutiny under the antitrust laws at all. I am advised by our counsel that at least until the mid-1970's, the Supreme Court interpreted the Sherman Act as being applicable only to the business world, at that as recently as 1970, the federal court of appeals in Washington had declined to apply the Sherman Act to an educational accrediting organization which refused to accredit a proprietary college.

This situation apparently changed in 1975 with a decision involving a minimum fee schedule of the Virginia State Bar Association, in which the Supreme Court made clear that the professions (and inferentially non-profit educational organizations such as the NCAA) did not enjoy blanket exemption from the antitrust laws. Even so, however, the Court suggested that the same antitrust standards traditionally applied to business organizations might not be applicable to the professions.

Since the rendering of this decision, the NCAA has been sued a number of times on antitrust grounds, and in each case until this most recent one, the courts have analyzed the alleged restraint on a "Rule of Reason" basis, and have uniformly declined to strike down the NCAA rule or practice as unreasonable. In many of these cases, the NCAA restrictions impacted on business interests. Thus, some five years ago, NCAA restrictions forbidding the commercial marketing of student-athletes for college admission were upheld. In 1977, an NCAA rule restricting the number of assistant football coaches was sustained as not unreasonably restraining competition. More significant, perhaps, a federal district court in Columbus, Ohio, just four years ago, refused injunctive relief to a cable television system seeking to televise Ohio State football games in violation of the then-existing NCAA television plan. Again, the court reached its decision by application of a Rule of Reason analysis.

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I recite this state of affairs in order to give the Subcommittee an objective perspective on the claim that the NCAA over the history of the various plans has been engaged in a knowing and willful violation of the antitrust laws.[2] Quite the contrary is true. Until the ruling by Judge Burciaga in 1982, the NCAA had no reason to believe that its pro-competitive justifications for the restrictions contained in the plan -- protection of live gate, maintenance of competitive balance among NCAA member institutions, sharing of revenues among a broader group of institutions, and creation of a more attractive "product" to compete with other forms of entertainment -- would not be found a sufficient basis to sustain the plan as not unreasonable.

D. Events Flowing From the Judicial Decisions

After having found that the NCAA plan violated the Sherman Act, Judge Burciaga in his September 1982 opinion entered a sweeping injunction, enjoining the NCAA (a) from attempting to enforce the contracts which had been entered into pursuant to the plan, (b) from "making any future contracts which purport to grant any telecaster the right to televise the football games of member institutions", and (c) from requiring as a condition of membership that an institution grant the NCAA power to sell its television rights. Judge Burciaga also determined, however, to retain jurisdiction over the matter, on the grounds that the "injunction . . . may well lead to circumstances which cannot at this time be foreseen."

Following an appeal by the NCAA from Judge Burciaga's decision, the Tenth Circuit Court of Appeals, in a 2-1 decision, affirmed the trial court's holding that the plan constituted, both on per se grounds and upon Rule of Reason analysis, a violation of the Sherman Act. Most significantly, however, the

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2/ Minutes of the CFA Board of Directors meeting held December 3, 1981, record that Mr. Andy Coats, one of the attorneys for Oklahoma, advised on that date that "[in]the past, antitrust laws did not apply to self-regulatory bodies. In the last ten years, however, the U.S. Supreme Court has ruled that in areas of commerce self regulatory bodies cannot be involved in price fixing or anti-competitive in the market place." (Emphasis added).

Court of Appeals raised question as to the validity of the scope of injunctive relief entered by Judge Burciaga. In response to our contentions that the order could be read as prohibiting broadcast of NCAA divisional championship games, a less restrictive membership-wide contract with "opt-out" or "pass-over" provisions, blackout rules, or imposition of sanctions for violation of non-television regulations, the Court of Appeals stated:

> "[The injunction] might be construed to prevent the NCAA from imposing television sanctions on schools that violate regulations unrelated to the television plan. [It] might also be read to preclude the NCAA from prohibiting games on Friday night. Neither of these effects is warranted by the violations found. Furthermore, [the injunction] appear[s] to vest exclusive control of television rights in the individual schools. While we hold that the NCAA cannot lawfully maintain exclusive control of the rights, how far such rights may be commonly regulated involves speculation that should not be made on the record of the instant case."

The Court of Appeals thus remanded the case to Judge Burciaga for further consideration. Following a refusal by the Court of Appeals to rehear the matter, the NCAA filed a petition for certiorari in the Supreme Court. The petition was granted in October 1983, and the trial court's order was stayed pending the Supreme Court's hearing of the matter.

The Supreme Court rendered its decision June 27 and declared the NCAA agreements with CBS, ABC, and ESPN invalid. Left open by the Court's affirmance of the Court of Appeals decision, however, was the fundamental issue whether, in light of the Court of Appeals decision and remand, the NCAA was nonetheless authorized to offer a less restrictive plan and to impose other restrictions related to the televising of games by its members.

Coincident with the issuance of the Supreme Court decision, the NCAA's Division I-A Subcommittee had scheduled its first meeting for June 28 in Chicago, in conjunction with the Division I-A Summer Legislative Meeting. The Subcommittee immediately began work on a National Football Television Plan to present to the Division I-A member at a special meeting on July 10 to consider television options for 1984.

The Division I-A Subcommittee conducted hearings in

Chicago on June 30 with representatives of Division I-A conferences, independents and network representatives. The majority opinion at those hearings favored an NCAA plan for 1984 and the inclusion of all members of Division I-A. With that mandate, the Division I-A Subcommittee developed an extremely flexible plan that was believed by counsel to be valid under the Supreme Court's ruling. It also realized the lateness of planning for 1984 would prove crucial. It thus provided that any institutions committing to the new plan would be released from their commitments by July 17, to allow them to pursue other football television alternatives in 1984, if Judge Burciaga's original order had not been modified by that date.

The NCAA promptly filed a motion with Judge Burciaga seeking a modification of his judgment, in order to allow the NCAA to implement the new plan. On July 10, however, the Division I institutions voted 66-44 not to accept the new plan, but instead adopted, along with Division I-AA, three principles applicable to the 1984 season:

1. There shall be no televising of collegiate football games on Friday nights, and any afternoon football televising on that day of the week must be completed by 7 p.m. local time in each location in which the program is received.

2. No member institution shall be obligated to televise any of its games, at home or away. No member institution may make any arrangements for live or delayed televising of any game without the prior consent of its opponent institution.

3. The gross rights fee paid for each 1984 national telecast or cablecast shall be subject to an assessment of four percent to be paid to the NCAA by the home institution. The assessment will be used to fund the cost of the NCAA postgraduate scholarship program and football-related NCAA services.

In fact, any hope of unified action on July 10 among the Division I-A football-playing members of the NCAA had been dissipated when the plaintiffs in the original lawsuit, the Universities of Georgia and Oklahoma, refused to join with the NCAA in agreeing upon a modification of the trial court's outstanding injunction, even though the basis for modifying the scope of the

injunction clearly had been laid by the rulings of the Court of Appeals and the Supreme Court.

Following the decision by the Division I-A members not to approve the proposed NCAA plan, the CFA, and the Big Ten and Pacific-Ten Conferences, then respectively undertook to market television plans to the networks. These negotiations resulted in contracts between the CFA and ABC for the televising of 20 games in exchange for a rights fee of $12 million, between CFA and ESPN for 15 games and a rights fee of $9.3 million, and between the two conferences and CBS for the televising of 16 games for $8.7 million. In addition, the Big Ten and Pacific-Ten negotiated contracts with independent syndicators for about $3 million each. We understand that one of the syndicators for the Big Ten has recently advised the Big Ten that it is unable to meet its financial commitments under the syndication agreement signed with the conference.

The CFA plans contained a prohibition against "cross-overs" -- that is, a CFA member was prohibited, absent the consent of all CFA members, from participating in the network telecasting of a game against a non-CFA member. This prohibition was, shortly after the beginning of the 1984 season, successfully challenged on antitrust grounds in a suit filed by two Pacific-Ten universities. This decision was very recently upheld on appeal to the federal court of appeals for the Ninth Circuit.

Additional suits have since been brought by independent television stations and a syndicator, in general challenging the right of college football groups and networks to prevent individual institutions to market televising of their games in head-to-head competition with other institutions. These suits raise the issue of the extent to which, if at all, a group of institutions may band together and negotiate a television package with a broadcasting network, where a part of that package calls for a period of network exclusivity on the right to televise the games of participating institutions. In our judgment, the outcome of these suits will be the next critical step in determining the opportunity successfully to market a television

package -- particularly to the national networks -- and a determination that exclusivity of telecast opportunity is not consistent with the requirements of the antitrust laws would undoubtedly have a serious negative impact on the amounts networks are willing to pay for such "packages" and, indeed, upon the interest of the networks in any form of package. Such a result would, in turn, have a potentially serious adverse effect on the capacity of many institutions to operate an athletic program at present levels.

In addition to the CFA and Big Ten/Pacific Ten national "packages", a number of other conferences or individual institutions have negotiated regional or local television arrangements with independent networks and syndicators. According to our best information, these arrangements call for rights fees aggregating approximately $9 million. Combined, the national, regional and local arrangements call for rights fees of $45.5 million. By comparison, had the NCAA 1982-85 plan remained in effect, rights fees from ABC, CBS and ESPN would have aggregated $73.6 million.

Not only have rights fees radically declined in 1984, but it appears that the new marketing arrangements are resulting in marked decline in viewership. Through the end of October, average rating on the Neilsen Index for over-the-air broadcasts was 7.3 -- a full two points (3.15 million homes) below the average rating for 1983 for the same period.

No final information is as yet available on the impact of the new marketing arrangements on live gate. Data currently available indicates that attendance on the average may be slightly ahead of 1983, but that there are significant week-to-week fluctuations in attendance which are more pronounced than in prior seasons. Moreover, it is not clear at this point the extent to which attendance figures for 1984 may be misleading -- due to the fact that at most major institutions, a substantial bulk of live gate arises from the pre-season sale of season tickets; informal reports from around the country suggest that there is an overall increase in the number of "no shows" among these season ticket holders. It is not known at this time, of

course, whether the new marketing arrangements will have a significant impact on the sale of season tickets for the 1985 season.

With reference to television revenues for Divisions I-AA, II and III, it will be recalled that under the most recent NCAA plan, Division I-AA institutions received $7.7 million in 1983 and Divisions II and III institutions combined received $360,000. In addition, marketing of the NCAA championships for these Divisions in 1983 produced $1.23 million for participating Division I-AA institutions and $670,000 for participating Division II and III institutions.

Television revenues to these Divisions in 1984 will undoubtedly be radically reduced. Although some Division I-AA conferences have been able to enter into marketing arrangements for the regional televising of games of member institutions, these arrangements are all contingent upon the production of a net profit -- and it is our present understanding that in no case have profits been generated to date in 1984.

We also believe that some Division II and III institutions have in 1984 negotiated television contracts for individual games (including games participated in by my own institution). We do not believe, however, that the revenues being generated under these arrangements are significantly different from those which were generated to these institutions under individual marketing arrangements in 1983 -- as a result of "exception" opportunities provided to these Divisions under the most recent NCAA plan. What has been lost to these latter institutions is the opportunity to derive revenue as participants in a national marketing program. Perhaps more important, these institutions have lost the opportunity for broad regional or national television exposure -- an opportunity that many such institutions have regarded as an extremely valuable inducement to student-athletes to attend a particular institution.

I should also draw your attention to the fact that the NCAA has been unable in 1984 to negotiate a marketing arrangement for the televising of its Division I-AA, Division II and Division

III championships. Recently, the NCAA Executive Committee voted to underwrite the cost of the televising of these championship games -- so that in fact they will be televised on a limited basis through the Satellite Programming Network and in local markets -- but these appearances will not produce any significant television revenue to the participating institutions.

During the entire period of negotiation of new arrangements during the summer and early fall, there remained pending the NCAA's motion to Judge Burciaga, seeking modification of his original order in light of the Court of Appeals and Supreme Court decisions. On October 31, Judge Burciaga entered a modified order, stating that nothing in his original injunction should be construed as preventing the NCAA from restricting televising of games on Friday evenings, imposing sanctions restricting television appearances for violation of non-television rules and regulations, or arranging the sale of its own championship games.

In the opinion accompanying the order, moreover, Judge Burciaga clarified his position whether the NCAA could legally in the future offer a television plan on behalf of its members, stating:

> ". . . if there is any institution which wishes to assign this important property right [to telecast its games] to any entity, including the NCAA, it may do so under whatever terms it deems appropriate. But under no circumstances may such an assignment be brought about by the coercive measures which have previously been detailed by this Court."

The Judge declined, however, to state specifically on the record before him the terms of an arrangement that he would approve.

The NCAA has no present intention to offer a television plan for the 1985 or any subsequent season. On November 1, the NCAA Television Committee determined that notwithstanding Judge Burciaga's recent decision, it would not attempt to develop a television marketing plan unless asked to do so by its membership.

It is obvious that at least to date, the voiding of the NCAA's 1982-1985 Plan has resulted in a serious reduction, for most of its members and for its members as a whole, of the revenues to be derived from the marketing of rights to televise

their football games. I should also note a further result of the Supreme Court decision -- because of the serious reduction in assessment revenues to the NCAA resulting from the new marketing arrangements, the NCAA Executive Committee has determined that after 1985, the NCAA will cut back the transportation subsidies heretofore paid for participants in NCAA men's and women's championships. For some institutions, this may mean the difference between participating and not participating.

This subsidy program, which in major part has been made possible by revenues to the NCAA under its recent television plans, was widely viewed as representing a major boost to the opportunity of student athletes of both sexes to participate in National Collegiate Championship competition, a result which was particularly pronounced for a number of the increasingly-popular collegiate sports for women. It was only recently -- based in significant part on the assessment funds available from its television plans -- that the NCAA has been able to undertake a major expansion of its championship program to include women's championships; now the current situation carries with it the risk of a serious undercutting of revenues available for men's and women's championships.

Whether the NCAA membership will determine to pursue some alternative television marketing course in the future is, I believe, a matter of speculation. I can only hope that the events of the past several months will not eventually be determined to have undercut the benefits and popularity of the game of football itself -- not to speak of collegiate championship competition in a host of other sports.

Thank you.

Senator GRASSLEY. Go ahead, Mr. Snider.

Mr. SNIDER. I would like to comment on what's happening right now, from the CFA standpoint.

First of all, it's a bonanza for the fans. There's no question about that. You would think that with all of this football on television, and quality football on television, that attendance would be affected negatively, but that hasn't happened yet. Attendance is up across the country. In CFA schools, attendance is up about 1,000 per game.

Revenue for CFA schools—that's CFA schools only—has to be termed very good, much better than expected. Now, it's true that these teams are having to play more games to realize the same revenue, and they're having to juggle their kickoff times, and they're probably irritating a lot of their hard-core fans. But revenue for the CFA schools is good.

This television situation has been a bonanza too for the networks, because they got, at bargain-basement prices, a very quality product, and they want us back.

What is happening now is that the CFA is preparing a television plan for 1985. It will be presented to the CFA member institutions, and it will be up to those members to determine what's going to happen in 1985 with regard to CFA members on television.

That's my statement.

[The complete statement follows:]

November 13, 1984

Statement of Richard S. Snider, director of communications for the College Football Association, to the Senate Judiciary Committee Iowa field hearing at Cedar Falls, Iowa, November 19, 1984.

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Mr. Chairman, my name is Richard S. Snider and I am director of communications for the College Football Association. In this statement I am expressing the views of Charles M. Neinas, executive director of the CFA, as well as my own.

The results of the Supreme Court decision have been varied, but for the most part predictable. The CFA television plan has been a bonanza for the fans. It has been responsive to viewer preference and to the courts' opinion regarding restriction of output.

Each Saturday, TV fans have had the opportunity to watch several games, including games of regional interest as well as games of national interest. Surveys and polls show conclusively that TV fans are enjoying this season-long feast of quality games, and hope it continues in future seasons. Some have called this offering of telecasts a glut, others a smorgasbord. Whatever it is, fans like it.

And whatever it is, it appears that so far it has not affected attendance. Attendance is up. The NCAA says overall attendance for all Division I-A institutions is up. Our own CFA survey shows the average attendance for our 63 members is up about 1,000 per game.

But we admit we have concerns. The Supreme Court decision came late, and the college forces, unable to bring about a coalition, were divided. They took their product into a buyer's market and the result was that the CFA did not sell its games to television for as much as anticipated.

That meant that going into the season some of our institutions were disappointed, and said so. But as the season progressed, and revenue from the networks, from syndicated packages, from cable and all other TV sources began to mount up, much of the criticism subsided.

Today, for example, we understand that the Big Eight is enjoying the most successful TV revenue year in its history. The Southeastern Conference is experiencing its second best revenue year. Many institutions are equalling for surpassing last season's TV revenue.

On the other hand, some conferences and some institutions aren't doing as well as last season. Even among the success stories there is some concern over what has happened to college football television in the 1984 season.

It must be remembered, however, that 1984 is a most unusual season. What has happened is not normal and the season should not be used as a measuring rod. Television planners know this, and will take this experience into consideration in shaping a new plan.

There is a degree of uncertainty in the future, but the CFA is moving ahead. We are preparing a new TV plan for presentation to our members. The networks say they want our games. It will be up to our member institutions to decide the direction the CFA will take. One thing is certain: Thanks to the Supreme Court decision, they will determine their own TV destiny.

Thank you, and I will be happy to answer questions.

Senator GRASSLEY. Thank you. I have some questions for both of you, and then some questions that I would direct to you individually. But even though I do address questions to you individually, if the other wants to comment, feel free to do it.

Both of you, will the operation of the free market serve to shut out the primary objective of the university; that is, providing higher education to all students, including student athletes, or will the institutions sacrifice this objective by going all-out to capture the TV dollars through development of winning teams? And if this happens, what are the consequences?

Dr. SPONBERG. My immediate reaction is that I believe the rich will tend to get richer, and the rest of us will suffer because of the aura around Saturday afternoon on the college campus.

Senator GRASSLEY. Mr. Snider.

Mr. SNIDER. I believe that there's going to be a middle ground reached on the number of games that are going to be on television. A lot of schools in this current season said enough is enough, and too much is too much, and they said that we don't want any more games on television, because it is going to impact negatively on our attendance and on our total program.

I think that—if I understand your question—I think that they're not going to be totally greedy, and they're not going to go for seven, eight, nine games on television.

Senator GRASSLEY. OK. And you did interpret it correctly.

Next, to both of you, is it correct that the decision has no effect on the NCAA's enforcement powers, and does the CFA enjoy those same enforcement powers to impose sanctions against schools that are in violation of the rules, like recruiting, for example?

Mr. SNIDER. We have no sanction power, whatsoever. We cannot do anything to anybody. If somebody chooses, if some member institution chooses not to follow the CFA's television plan, we have no sanction power. There's nothing we can do. We just hope that they follow it.

Senator GRASSLEY. Dr. Sponberg?

Dr. SPONBERG. I believe I'm correct in saying that the sanctioning power of the association is not affected by the decision, particularly with Judge Burciaga's revision of his initial order.

Senator GRASSLEY. Prior to that refinement, would it have affected you adversely?

Dr. SPONBERG. I think the NCAA would have had a problem with enforcement procedures if television were removed as one of the things that would have been available to use against a rule violator.

Senator GRASSLEY. Another question to both of you, and this goes back to July, when NBC suggested that the establishment of an umbrella organization might be useful to assist individual schools with television. If you know about that, can you comment on this proposal?

Mr. SNIDER. July 1981?

Senator GRASSLEY. No. July of this year, NBC's suggestion, to assist individual schools * * *. No, that was suggested, my staff tells me, in a House hearing. So if you aren't aware of it, then you can submit that answer in writing, if you'll do that.

Mr. SNIDER. I'll be glad to do that, because I'm not prepared to answer.

Senator GRASSLEY. You aren't either, then, are you?

Dr. SPONBERG. Well, I believe this has been referred to as the coalition, the umbrella organization, an organization outside of the NCAA that had none of the enforcement powers, and it was going to be a group to just get together as a CFA coalition, where they were going to market the television process.

Senator GRASSLEY. Well, maybe you can think in terms of submitting something in writing.

To Dr. Sponberg, in light of Judge Burciaga's most recent decision, what prevents the NCAA from now offering its own television plan?

Dr. SPONBERG. First of all, it would have to be all voluntary. I think what would happen under those circumstances, as opposed to what it was in the agreement contract 1982–85, I believe the power, the control, would shift from the Division I–A membership in toto to a few of the stronger football-playing institutions.

It seems to me that those stronger football-playing institutions would be in a position to say, "We want six appearances, and if we don't get them, we're going to cut our own deal."

So I doubt if the effectiveness would be nearly as efficient as the plan that was struck down by the court.

Senator GRASSLEY. OK. You state in your testimony that NCAA assessments which are used for scholarships, promotions, especially student athletics, are now severely restricted.

Can you tell the committee approximately how much money was budgeted for these activities, and do you see any possibility for continuing these programs?

Dr. SPONBERG. I can't give you the exact figures. I know the bulk of the $5.5 million that was in the 1983 assessment has been used by those of us who don't generate that kind of money, for transportation for the 72 championships that are sponsored by the association. And that's where the bulk of that is. As is indicated, that money has also been used or earmarked for postgraduate scholarships, some of which—I think it's 33 at this point—that go to Division II and Division III institution student athletes.

Those programs will probably continue, but as the budgets become tighter, some of these things have to be restricted, and it's my fear that as those programs become more restricted due to budget limitations, that opportunities for athletic participation will be diminished.

ATTENDANCE

Senator GRASSLEY. As a result of the current situation, would you predict that gate receipts will decrease in the future, and the contention has been made by others that live attendance is actually up this year, and I'd like to have you respond to that.

Dr. SPONBERG. I think it's too early to assess the impact of the Supreme Court's decision on gate receipts. If you'll look at the history of college television and its respondent in-stadium attendance, before the first program was put into effect, back in 1952, gate receipts for in-stadium attendance was on the decrease. It decreased

for 2 years after the initial plan was put into effect, and from that point on, in 1954, the gate attendance began to climb. And I think a great deal of that increase in in-stadium attendance was a result of the limitation—or the regulation of football television.

It's not only the revenue that's at issue; it's what else happens on Saturday afternoon on college campuses. The bringing back of the alumni, getting those people into the stadium, and the ultimate support and the revitalization of attendance in the activities that take place on the college campus that helps in this educational endeavor.

I predict, if the televising of football games continues uncontrolled, those stadiums will gradually empty. There will be nothing to televise. It won't be of importance to the viewing audience if there aren't people in the stands. I think there's enough data available to indicate that that's the picture.

Senator GRASSLEY. How does the situation in football differ from the fact that it hasn't hurt basketball attendance, considering the fact that the free-market operation is there as far as televising that?

Dr. SPONBERG. I think the free-market televising of basketball games is a different issue. First of all, there are a lot more games. Second, we're talking about considerably reduced arenas. And as a result, I don't think the two are—that it's fair to compare the two.

REVENUES

Senator GRASSLEY. OK. Now, to Mr. Snider, I hope that maybe we've got enough of the football season behind us that you can give us some sort of analysis of what's gone by since the decision. According to the testimony that was given by NCAA earlier this year before the House subcommittee that I've already referred to, it was predicted that revenues to the universities would decrease from $70 million under the NCAA, to approximately $35 to $40 million under the new plans, these now in operation this year. In addition, it was stated that the number of schools which received exposure would be less than one-half of what it would have been under the NCAA plan.

Now that most of the 1984 football season has been completed, can you give us an accurate picture of the situation? Are these figures correct? And should we be in the business of fostering a state of affairs which appears on its face to be negative to most colleges and universities?

Mr. SNIDER. I'll speak first for revenue for CFA schools. In 1982 the member institutions of CFA received about $34.9 million in television revenue. In 1983, that figure was about $39.5 million. And our projections are that in 1984 it'll be about $35 million.

So we have a chance to exceed 1982. We have a chance to get within hailing distance of the record year of 1983. We have no way of knowing what 1984 revenue would have been under the NCAA plan, because, you know, the distribution wasn't made.

So we think revenues are pretty good. We recognize that teams had to play twice as many games to get the same revenue, and we had to irritate fans by juggling kickoff times. But by and large, rev-

enue is, for the CFA members schools, which I can speak for, it's not bad. Better than expected.

SCHOOLS CHEAT

Senator GRASSLEY. I next want you to comment on a comment by Walt Byers of the NCAA, whether or not you subscribe to his view that up to 30 percent of the colleges and universities cheat, and much of this cheating is due to pressures created by the lucrative television contracts. If this is the case, doesn't the current system contribute to an already negative situation?

Mr. SNIDER. He commented on the fact that so many schools cheat, and I'm going to speak personally here. It's a personal feeling that he should have known that. That should not have been a mystery to him, if it's true. He's in charge, and it's remarkable to me that he could suddenly discover that this is happening. He's been there 30-plus years, and if anybody in the world should know who's cheating, or are there people cheating, it should be Walter Byers. And it may well be what he said is true, but the agency to police that is the NCAA, and he is the head of the NCAA, and if anybody should've known it, he should've known it.

I think it's not so remarkable that he says that many people are cheating. I think it's remarkable that he would suddenly discover that that's happening.

Senator GRASSLEY. Do you think the current situation will enhance that situation?

Mr. SNIDER. Not at all. Not at all.

Senator GRASSLEY. I don't know whether I ought to invite you to comment or not, but if you want to, I want to leave it open for you. Maybe you don't care to, and that's all right.

Dr. SPONBERG. As representative of the Division II schools, cheating is not a serious problem at our level.

Senator GRASSLEY. Another question, Mr. Snider. Can you address the problem created by the CFA contractual prohibition against schools participating in telecasts of cross-over games with a non-CFA member?

Mr. SNIDER. We entered into exclusive contracts with ABC and ESPN, and it's our view that exclusivity is as old as the industry. ABC has the right to telecast local exclusively, and NBC has the right to telecast the world series exclusively. And if we say to Nebraska that you can't play UCLA on CBS, that's part of the exclusive contract. And if we say to Notre Dame, you can't play Southern California on CBS, that's part of the contract we have with ABC.

But, the court's ruled otherwise, and those schools are abiding by the ruling.

Senator GRASSLEY. Later today we will be hearing, as you can tell from the schedule, the frustrations from division I-AA and division III schools that have resulted from the Supreme Court decision. Do you have any sympathy for their position, and can you suggest any solution for their problem of decreasing attendance and the lack of exposure?

Mr. SNIDER. I wasn't aware that—as a matter of fact, there's an NCAA survey that says I-AA attendance is up for 1984. I also be-

lieve that I-AA exposure on television is up. The Ivy League has a television plan, a package, that has a game every week. The Mid-American Conference has a package. Many I-AA schools are involved in television in syndicated packages that are on every Saturday.

The black schools have about a 15- or 16-game schedule on Saturday night.

So I would say their exposure has not suffered. Probably the exposure of I-AA schools—I can't say the same for Division III—but I-AA schools, probably the exposure is up. There are probably more games on television for them than ever before.

Senator GRASSLEY. In regard to that previous question I asked you, do you have any plans to remove restrictions of the crossover between CFA and nonmembers?

Mr. SNIDER. When I summarized that statement, I said that CFA is in the process of formulating a 1985 television plan. It's going to address all the problems of 1984, and there were a lot of them that were unforeseen. Crossover is one of them. And what will happen, I don't know. The plan will be presented to the members, and the members will vote on it. And that will be the attitude of the CFA members for 1985.

Senator GRASSLEY. I'd like to, lastly, have you respond to the accusation that the CFA's TV plan is no more competitive than the NCAA's, and, as maybe you know, it's contended that this contributes to a worse situation, as the CFA's interest is merely to increase the profits to big football powers, as opposed to the broader interests of the NCAA.

Mr. SNIDER. I think the CFA plan addresses the views expressed by the courts. Their big concerns were restriction of output and viewer preference. Now, certainly in 1984 there has been less restriction of output than ever before, and I think there's been more viewer preference, because what the viewer is seeing is quality games. They're not being forced to watch—or they're not being offered a game that is not a quality game, and that would be the only game that they could see, as in the previous plan.

We think this plan, with all of its problems, has responded to what the courts have said. And I think a lot of the key elements of the plan will continue.

Senator GRASSLEY. Do either of you have anything you want to add to the record before I thank you and call the next panel?

Dr. SPONBERG. Just thank you for the opportunity to be here.

Mr. SNIDER. Thank you, Senator.

Senator GRASSLEY. Thank you very much, and I appreciate the relative calm with which competitors like you address this issue. We appreciate it very much and feel that, really, the tenor of the remarks and the competition is going to be healthy in the long run.

I would now like to call panel II, Mr. Bob Bowlsby, who is the athletic director at the University of Northern Iowa. He has been a most gracious host for our committee, and I'd like to thank you. I know that you had a lot of administrative responsibility for setting this up and addressing our problem. We thank you for that. I do that not only for myself and my staff, but also for the entire Judiciary Committee, for everything you've done.

Mr. Bowlsby has been with UNI, I believe, for 5 years, and has appeared on Sports Time cable and ABC regional television.

Our other witness is John Kurtt, who has been athletic director of Wartburg College for 21 years now, and who is also active in division III of the NCAA. I've known John Kurtt all my life since high school, because he was the coach at the little town of New Hartford, where I graduated.

So, Bob, would you start, please?

Mr. BOWLSBY. Certainly.

STATEMENTS OF PANEL CONSISTING OF: MR. BOB BOWLSBY, ATHLETIC DIRECTOR, UNIVERSITY OF NORTHERN IOWA, AND MR. JOHN KURTT, ATHLETIC DIRECTOR, WARTBURG COLLEGE

Mr. BOWLSBY. During the past 18 months there has been much discussion regarding the relative merits and legality of one approach to television college football, the NCAA package, as opposed to an array of others. Most of the past discussions have been delayed from any semblance of finality due to the then-impending legal battles which were being fought. While there was much speculation as to the eventual outcome of the litigation, many of us in divisions I-AA, II, and III began to see the handwriting on the wall; that being there was an excellent chance we would be pared from serious consideration for television exposure. One of the ramifications which was only quietly forecast, however, was that a great many I-A institutions would suffer along with us.

With the recent saturation of attractive television games involving Top 20 teams, many of the remaining members of I-A and most of I-AA, have fought hard, and in most cases futilely, for the scraps. In addition, many institutions at all levels have suffered considerably in terms of gate receipts as a result of multigame offerings through the networks and the syndicators. The University of Northern Iowa is among those which I believe have struggled through this difficult period.

In 1 year, UNI's average home attendance has dropped from 11,075 per game to just over 9,500 per game. This is particularly revealing, given the fact that we are 9-2 this year and were 6-5 in 1983. There can be no question that an increased number of telecasts within the period of time when our games are played has had a negative effect on paid attendance. Certainly, this is particularly true when I-A institutions within our immediate area are involved in televised games.

It is my opinion that the current glut of television football offerings is having an immediate, and potentially long-term, effect on our football ticket revenue and, in turn, on our overall athletic program. This reduction in gate revenue, combined with a reduced opportunity to realize television dollars ourselves, makes I-AA a particularly unenviable position to be in. Nonetheless, there has been evidence that questions and answers have begun to unite.

Judge Burciaga's memorandum opinion dated October 11, 1984, has defined the NCAA's latitude relative to TV negotiations for divisional championships. Further, his opinion has indicated that a voluntary television program, comprised in all likelihood of the have-nots, would be acceptable. Obviously, this cartel, if formed,

would have only limited appeal to national or even regional packagers. In addition, this approach contributes greatly to the super league concept which football powers have proposed, by increasing the gap between the major college football programs and the rest of the NCAA. In that vein, separation could contribute to the disintegration of the concept of broad-based sports offerings in all divisions. This seems contrary to the precepts upon which intercollegiate athletics has been built.

Specifically, our problems at Northern Iowa, and at many other I-AA institutions, are as follows:

1. Unlike basketball and many other sports, virtually all of our games are played on Saturdays. Because almost all major TV games are played between 1 p.m. and 9 p.m. on Saturdays, we have no security relative to safe starting times for contests. We have been substantially hindered by lost gate receipts.

2. We currently have a very limited access to TV opportunities locally, because so many national packages and feeds are available.

3. The potential for deterioration of the overall athletic program due to decreased revenue is constantly present.

In summary, there can be no question that we at Northern Iowa were much better off under last year's plan. While I would prefer to return to the NCAA television package, it seems that growing expenses at individual schools, coupled with the NCAA's desire to negotiate successfully for its members, has forced rights fees under the NCAA 1982-85 plan to climb far above the level where producers of sports programming could make adequate profits. Nonetheless, it has been, and should be, the role of the NCAA to represent members at all divisional levels.

Since the court has chosen to deal with college football as a business enterprise rather than as an ancillary undertaking closely linked to the educational mission of the schools, it will be continually more difficult for the NCAA to coordinate and represent the interests of its affiliates. In this regard, I suspect that many institutions in divisions I-A, I-AA, II and III would prefer to again see the NCAA involved in television football to an extent which would afford some protection against the kinds of problems which the University of Northern Iowa is currently experiencing.

Senator GRASSLEY. John.

Mr. KURTT. Thank you, Senator Grassley, for the opportunity to be here. I, too, in listening to Bob and his presentation it's amazing how we come up to the same agreement here.

I put in some background information, because sometimes division III, although it's the largest group of schools in the NCAA, totaling 341 members, we sometimes consider ourselves the conscience of the NCAA, because we vote not where the money is, because we have no money to deal with. We're program oriented, and when we speak of programs, it takes money to have the programs we have, also.

We joined the NCAA back in 1956 when there were no moneys available, and we joined it when there were two divisions. Out of this realization, the division concept was spawned, because NCAA offered us some things that we could not get from other organizations at that time.

Wartburg, along with many other like institutions, felt athletics were an integral part of a student's total education. Therefore, the guidelines for membership in division III were developed, the most distinctive feature being that financial aid to student athletes must be based on financial need, with no athletic scholarships.

A copy of the division III philosophy statement is enclosed.

Most of the colleges that joined division III wanted equal competition and the high quality of leadership the NCAA offered through their organization. This led to a full program for women and men, with national championship offered in more than 18 sports.

With membership increasing, more and more interest developed in national championships and led to qualifying standards and reimbursement for travel and per diem. Since the majority of these championships were not self supporting, funds for expenses came from the NCAA television revenue contract. Funds set aside each year from this contract were a tremendous boost to division III programs.

As a result of this decision, the rights and fees from the NCAA's contract with the major TV networks were voided. The contract was voided and left division I-AA, II and III unable to sell games. Division III realized $150,000 from its portion of the NCAA contract for televising four division games in 1983.

Thus, the most obvious effect this decision has had is that there is no television money available to the NCAA or division III schools for championships competition. It could mean competing schools will have to travel to championship events at their own cost. This would make it impossible for the majority of division III colleges like Wartburg to compete in national championships when they qualify.

A prime example of this is the division III football championships. Because of the surge of interest, 16 schools were to be selected for playoffs this fall. When the TV contract was voided, it meant no available funds, and the playoffs reverted back to eight schools, with the further possibility of reduced reimbursement for travel costs to participating teams.

Another obvious effect on our program is decreased gate receipts at our football games. This is compounded by the fact that several games are available for viewing each Saturday, and fans stay home to watch them rather than attend our game. When the weather is adverse it makes attendance drop drastically, as it is easier to view a game in the confines of one's home.

Being located in Iowa puts us in conflict with all the University of Iowa televised games. Fan enthusiasm and loyalty for the Hawkeyes even reaches into our own student body.

Fortunately, our athletic budget is based on program content and is built like any other budget on campus. We do not depend upon gate receipts for our 16 varsity sports, but it certainly helps the college keep the financial support at a respectable level.

With the loss of these funds, the college must make tough decisions as to how to support its athletic program. Do you cut funds to all sports? Do you cut sports from the program? As participation is a hallmark of the Division II philosophy, both alternatives are devastating for the student athlete and the college.

Formerly, under the NCAA television contract, we were protected from this television encroachment. This was pointed out earlier by my colleagues from the cablevision. If the University of Iowa or Iowa State University wanted to televise in our area, in conflict with our home game, they had to pay for all our seats that went unsold for that game. This was a protection that we lost in the court's decision.

As I stated, loss of gate receipts is a factor, but the loss of fans and general interest in our program is just as devastating. I think this was pointed out by Ade Sponberg. Our athletes enjoy fan support and crowds, but the proliferation of televised games has reduced this noticeably.

We have no possibility of marketing our program in order to gain a television contract. There is no demand for it, nor would we be necessarily interested if there were. We do feel, however, that the court made an unwise decision when they ruled in favor of the University of Oklahoma. Everyone has had reduced revenues, and it has particularly affected Divisions II and III and I-AA.

We belong to the NCAA because of the programs and leadership it offers us. The NCAA is governed by its members. We truly believe this, and have complete faith in this organization. Admittedly, changes need to be made and rules and regulations need constant revision. However, some institutions look upon the NCAA as an outside agency that puts unnecessary rules, regulations and constraints upon them.

The NCAA is a voluntary organization and needs to have the opportunity to regulate itself for the good of the total membership. The loss of its television revenue plan has been a severe loss to the NCAA membership. College athletics needs guidance, rules, regulations and support, and the NCAA can provide this if given the chance.

At our level we tend to view the whole action of the University of Oklahoma and like institutions as pure big-time business. They have little concern for what athletics stand for, and show no concern for the Division III philosophy.

My counterparts from Division I-AA and II schools will have more detailed information about their programs, and I am sure the NCAA office will provide additional information about the loss in revenues.

[The complete statement follows:]

DATE: November 12, 1984

TO: Senator Charles E. Grassley
Chairman, Subcommittee on Administrative Practice and Procedure, Committee on Judiciary

FROM: John Kurtt, Athletic Director, Wartburg College, Waverly, Iowa

RE: Statement on the effects of the Supreme Courts decision in National Collegiate Athletic Association v. Board of Regents of University of Oklahoma.

Background Information

Wartburg College has been a member of the NCAA since 1956. At that time there were only two divisions, a University and College. Through the years it was fairly obvious that many institutions like Wartburg could not compete with many of the larger colleges and universities in the College Division. Out of this realization the Division concept was spawned, leading to the present Division, IAA, IA, II and III concept.

Wartburg, along with many other like institutions, felt athletics were an integral part of a students total education. Therefore the guidelines for membership in Division III were developed. The most distinctive feature being, financial aid to student-athletes must be based on financial need with no athletic scholarships.

A copy of "Division III Philosophy Statement" is enclosed as supplement No. 1. You will note that there are considerable differences between program philosophies in Division I, II and III institutions.

Most of the colleges that joined Division III wanted equal competition and the high quality of leadership the NCAA offered through their organization. This led to a full program for women and men, with National Championships offered in more than 18 sports.

With membership increasing more and more interest developed in national championships and led to qualifying standards and reimbursement for travel and per diem. Since the majority of these championships were not self supporting, funds for expenses came from the NCAA Television Revenue Contract. Funds set aside each year from this contract were a tremendous boost to Division III programs.

NCAA vs. University of Oklahoma, Supreme Court Decision

As a result of this decision the Rights and Fees from the NCAA's contract with the Major TV networks were voided. The contract was voided and left Division IAA, II and III unable to sell games. Division III realized $150,000 from its portion of NCAA contract for televising four Division games, in 1983.

Thus the most obvious effect this decision has had is, there is no television money available to the NCAA or Division III Schools for championship competition. It could mean competing schools will have to travel to championship events at their own cost. This would make it impossible for the majority of Division III Colleges, like Wartburg, to compete in National Championships when they qualify.

A prime example of this is the Division III football championships. Because of the surge of interest, 16 schools were to be selected for playoffs this fall. When the TV contract was voided it meant no available funds and the playoff, reverted back to 8 schools, with the further possibility of reduced reimbursement for travel costs to participating teams.

Another obvious effect on our program is decreased gate receipts at our football games. This is compounded by the fact that several games are available for viewing each Saturday and fans stay home to watch them rather than attend our game. When the weather is adverse it makes attendance drop drastically as it is easier to view a game in the confines of ones home.

Being located in Iowa also puts us in conflict with all the University of Iowa televised games. Fan enthusiasm and loyalty for the Hawkeyes even reaches into our own student body.

Fortunately our athletic budget is based on program content and is built like any other budget on campus. We do not depend upon gate receipts for our 16 varsity sports, but it certainly helps the college keep the financial support at a respectable level.

With the loss of these funds the college must make tough decisions as to how to support its athletic program. Do you cut funds to all sports? Do you cut sports from the program? As participation is a hallmark of the Division III philosophy both alternatives are devastating for the student-athlete and the college.

Formerly, under the NCAA Television Contract, we were protected from this television encroachment. If the University of Iowa or Iowa State University wanted to televise in our area, in conflict with our home game, they had to pay for all our seats that went unsold for that game. This was a protection that we lost in the courts decision.

As I stated, loss of gate receipts is a factor, but the loss of fans and general interest in our program is just as devastating. Our athletes enjoy fan support and crowds but the proliferation of televised games has reduced this noticeably.

We have no possibility of marketing our program in order to gain a television contract. There is no demand for it nor would we be necessarily interested if there were. We do feel however that the court made an unwise decision when they ruled in favor of the University of Oklahoma. Everyone has had reduced revenues and it has particularly affected Divisions II and III and IAA institutions.

NCAA Membership

We belong to the NCAA because of the programs and leadership it offers us. The NCAA is governed by its members. We truly believe this and have complete faith in this organization. Admittedly, changes need to be made and rules and regulations need constant revision. However, some institutions look upon the NCAA as an outside agency that puts unnecessary rules, regulations and other constraints upon them.

The NCAA is a voluntary organization and needs to have the opportunity to regulate itself for the good of the total membership. The loss of its Television Revenue Plan has been a severe loss to the NCAA membership. College athletics needs guidance, rules, regulations and support and the NCAA can provide this if given the chance.

I have no plan to offer, but do know a fair Television Plan can be worked out without undue outside interference from the courts or the government.

At our level we tend to view the whole action of the University of Oklahoma and like institutions as pure big time business. They have little concern for what athletics stand for and show no concern for the Division III Philosophy.

My counterparts from Division IAA and II schools will have more detailed information about their programs and I am sure the NCAA Office will provide additional information about the loss in revenues.

JK:mb

SUPPLEMENT NO. L

DIVISION III PHILOSOPHY STATEMENT

This statement, adopted by the membership of Division III in 1983, is based on the existing practices and ideals of institutions within the division. Some of its components have universal applicability as codified in the constitution and bylaws of the Association; others are widely desired but inhibited by special legal and financial regulations. A few are subject to differing treatment because of special policies and concerns of individual institutions. The statement is intended to inform the development of legislation and to serve as a guide to member institutions in planning and implementing programs of athletics.

Colleges and universities in Division III place highest priority on the overall quality of the educational experience. In so doing, they seek to strengthen the integration of objectives and programs in athletics with academic and developmental objectives, and to assure the integration of athletes with other students.

To that end, the college places special importance on the impact of athletics on the participants rather than on spectators, and greater emphasis on the internal constituency (students, alumni and special friends) than on the general public and its entertainment needs.

The athletics program is characterized by the following:

1. Participation is encouraged by maximizing the number and variety of athletic opportunities in varsity, club and intramural sports.

2. Participants receive the same treatment as other students. They have no unique privileges in admission, academic advising, course selection, grading, living accommodations or financial aid. Similarly, athletes are not denied rights and opportunities that would be available to them as nonathletes.

3. The athletics program is controlled, financed and staffed through the same general procedures as other departments of the college.

4. Sports for men and women are given equal emphasis and the desired quality of competition is similar in all sports. Participant interests will be one factor considered in the determination of the level of support provided by the college to each sport.

5. Students are supported in their efforts to reach high levels of performance by providing them with adequate facilities, competent coaching and appropriate competitive opportunities with students from similar institutions.

6. Primary emphasis is given to in-season competition, but exceptional teams and individuals may be encouraged through postseason championships.

The purpose of the NCAA is to assist its members to develop this approach as the basis for consistent, equitable competition and to do so in ways that minimize intringement on the freedom of individual institutions to determine their own special objectives and programs.

NCAA/mk9/7/83

Senator GRASSLEY. Before I ask questions, without me repeating what may be some of the things the broadcasters said—is there any rebuttal you'd want to make on anything that was presented by the first panel? If there is, we'd like to get that in the record from you two.

Mr. KURTT. They talk about good teams sold out. Nothing was said about poor teams sold out. Television interference—I think they can safely say that televising maybe will generate interest. The University of Iowa is particularly devastating to our program, not only the football, but the basketball as well. We have been unable to, during the basketball season, go head to head with any wrestling event, for instance, at our place. We can't even get our own students out. They stay home to watch the Hawkeyes.

So that's an effect on us too. And nothing's been said about what happens when you have a poor team, what would television rights do. And I think that's been pointed out by Ade and some of the others.

Mr. BOWLSBY. Earlier I think the University of Iowa was used as a very appropriate example as to what television can do relative to your in-house attendance. Certainly the University of Iowa has been able to maintain their sellout crowds for televised basketball events, but I can very safely say it's brought a whole new meaning to basketball scheduling for the University of Northern Iowa. We, from 3 or 4 years ago to this point, have scheduled absolutely nothing on Thursdays, because we have even difficulty getting radio stations to carry our events, much less getting people to come out to the ball games. We no longer play on Thursdays, and, in fact, have turned down some fairly good contracts that came on Thursdays. We do not play on Saturday afternoons, just because of the conflict.

And, as I mentioned in my statement, in basketball we have an alternative. We can go to a Wednesday or to a Tuesday or to a Saturday evening. In football, we are extremely limited in what we can do, because Saturday is traditionally the day we play. Now, we can try and go to Thursday night, but unless everybody goes, there's very little we can do there, because you can't play a game on Saturday and be ready to play another game on Wednesday or Thursday—or at least it's very difficult.

So it would be nice to have an alternative.

DECREASE IN ATTENDANCE

Senator GRASSLEY. Bob, in your testimony you mentioned that your home attendance has dramatically decreased since the Supreme Court decision, primarily due to the increased number of telecast games. Now, earlier, broadcasters and the CFA seemed to disagree with that, and say that exposure and attendance is up. Could you provide the committee with some numbers in this regard; in other words, how many more games are being shown on television this year, that affect your attendance, as opposed to last year?

Mr. BOWLSBY. Just since the time that we got word that we were going to have the hearing on campus, I've been doing a little checking with TV guides. Three weeks ago there were 10 games in our

market in the noon to 10 p.m. time slot. Last week there were 11, and this past week there were 12. All of those tend to be top-20 games with highly visible teams, generally out of the top 40 teams in the Nation.

That being the case, and proceeding upon a premise that deals with people being just a little on the lazy side, it's awful easy for them to stay home, rather than coming out to see us play. And because we're more competitive this year than we were last, I have very little else to hang my hat on other than the fact that the increased television exposure has got to be having an effect on our program.

Senator GRASSLEY. You testified that UNI fared better under the old system. Would you advocate some kind of antitrust exemption for the NCAA in order to return to that system, or would you just as soon see the Government keep out of the issue and allow the situation to work itself out? I know you commented on that in your closing statement.

Mr. BOWLSBY. I would very much like to see the NCAA be granted some kind of antitrust exemption. I think that in the situation where things like that have been done before, certainly by comparison the NCAA, in my mind, has a much better case to make, because they represent the broad interests of intercollegiate athletics.

Senator GRASSLEY. Now, did you express a concrete view that you feel there should be no legislation in this area, or——

Mr. KURTT. No, I didn't go so far as to say that. I thought if they could stay out of it as much as possible, yes. But I think ultimately what we're concerned about, and what everyone's concerned about, is the breakup of the NCAA through the possible action of leaving it open or—I think we have far more to protect here than TV dollars. I think we have thousands and thousands of young men and women around the country to protect, their rights to participate.

Now, that's the way we look at it from division III. I think that's a concern of everyone. That's why I'm concerned, that television at this point does not look at it that way at all. They think there's a market, they can be making money at it, and that's where it's going to go.

So, Senator Grassley, I think probably I would have to agree with Bob, that there may have to be some, but I think we have to be very careful, think very carefully in that area.

Senator GRASSLEY. From where you are, Dr. Sponberg, may I infringe upon your time to ask you the same thing, because you didn't comment on it, and I forgot to ask you. Do you think this ought to be dealt with in a legislative manner at all? Does the NCAA generally have a view on that?

Dr. SPONBERG. I think at this point we have established a new President's commission of the NCAA, and I think that's something that that group ought to take under advisement. It should be in their purview to make those decisions, whether or not this should be sought.

Senator GRASSLEY. So then at this point the NCAA doesn't have a view on legislation, but are you suggesting that the President's commission may be looking into that?

Dr. SPONBERG. I think it's something that they—that's an issue they should deal with. I'm only representing——

Senator GRASSLEY. Do you think they will deal with it, or do you think——

Dr. SPONBERG. I think they will deal with the issue and make a decision whether or not to seek the exemption.

Senator GRASSLEY. Yes. That's my point. Mr. Snider, were you starting to raise your hand? I don't have a question for you, but——

Mr. SNIDER. No.

Senator GRASSLEY. Now, one more question, Bob. Can you describe for me UNI's experience with television broadcasts in the past, what it's been this year, and will the division I-AA playoffs be telecast this year?

Mr. BOWLSBY. Our experience the last time we were on a regional telecast was in 1980, which we were then under the division II package. Because our conference is not an automatic qualifier for one of the twelve spots for the I-AA playoffs, we are not included on any sort of a regular basis under what would have been the NCAA's 1982-85 plan. And so we were not getting on as a I-AA member on any sort of a regular basis, but the formula did entail some involvement by I-AA on a regular basis; I think it was .286 times the number of teams that are in I-AA. That was the number of appearances we got annually, excluding the championship series.

As to whether or not—we would certainly have liked to have been a part of that, but because we only have four members in our conference, we were not. As to whether or not this year's championships will be aired, it's my understanding that they were aired regionally last year, and I would be very surprised at this point if they received any kind of package that would entail much in the way of compensation.

COST OF TRAVEL TO CHAMPIONSHIPS

Senator GRASSLEY. John, one of your major concerns is the cost of student travel to the national championships, which will no longer be borne by the NCAA via the TV revenue. So I have, naturally, a question that others have asked, couldn't these costs be covered in some other way? And, if you recall, one of the reasons schools such as Georgia and Oklahoma challenged the NCAA was because they resented what they referred to as a so-called welfare system it generated. So I'd like to have you comment on that, too.

Mr. KURTT. As I said, we are their conscience, and we consider ourselves voting many times in conflict, direct conflict, with them, because of that. We have never considered ourselves with our hand out, and we never will consider ourselves with our hand out. We think we have something—our schools, our philosophy, have something to give to the NCAA, we think we have something to offer, and in turn, we think they have a great deal to offer for the young men and young women of this country.

I think it's a liked organization, and yet it is disliked. We are the largest group, but we go in with no pretensions of being able to outvote them and get moneys from them. They offered this to us, and we didn't go with our hands out and saying we must have it. I think they find themselves in the same situation where they're looking for more moneys for their program, and if we want to con-

tinue our championship series, moneys m[illegible] be available. And it would be impossible for most institutions t[illegible] come up with this kind of money on a yearly basis, to make that kind of championship events possible.

Senator GRASSLEY. Could you estimate for us how much lost revenue—could you translate that into dollars—has happened to your live gate as a result of the current broadcasting situation?

Mr. KURTT. Because of the Division III philosophy, gate receipts, as I stated, are not a major concern for us, as such. Because we have a lot of walkins and a lot of free passes, our gate receipts—our percentages would probably be a better term to use. At this time, I don't know what it would be. We don't have a dome to play in, like UNI, so we are faced with weather, and this fall has been bad weather. So we have had some poor crowds. Whether it's attributed to TV or the rain and cold we've had, it would be very difficult to say. But gate receipts are down for games that normally would have drawn more people. Spectators are down because of that, I would say. From what was normally a very attractive home schedule, attendance has been down.

Senator GRASSLEY. Has Wartburg had any past experience on television, and can you predict how the current situation will affect Wartburg's chances to appear in the future on television?

Mr. KURTT. As I stated, in the past, by virtue of the TV contract with the NCAA, Division III was guaranteed four games, on a regional basis only. In 1982, the year that we participated in the national playoffs, we were considered down to the final week as a regional playoff game, but we were not selected. And that, of course, as Cablevision has already said, it's a nonprofit thing for the Cablevision, but it was written in the contract. But it's not something that Division III schools really need for exposure. It's something that was offered, I guess, as a plum.

Senator GRASSLEY. Any comment from either one of you in closing, before I call the next panel?

Mr. BOWLSBY. Well, only one. Relative to the gate receipts question, in our case, just projecting based upon what we drew last year compared to what we drew this year, our lost revenue could be as high as $80,000 to $100,000. Now, it's hard to speculate if all of that is due to television, but that represents 4 to 5 percent of our overall budget, and that has a devastating effect on us.

One other thing that makes it particularly difficult for I-AA is that a lot of people in our division are attempting to play—are in Division I in all other sports—and are attempting to compete against the same people who are receiving large sums in terms of television dollars. Our basketball team last year played I believe it was three Big Eight teams, Big Ten teams or Valley teams. In those instances it's extremely difficult to compete when we're losing gate receipts and television opportunities, while the ones we're competing against are continuing to receive those.

And so on the one hand, we're dealing with a separate division; on the other, we're very much trying to compete in the same arena as some of the people who are still involved.

Senator GRASSLEY. I thank you very much, and once again let me thank you as the host for——

Mr. BOWLSBY. It's a pleasure to have you here.

Senator GRASSLEY. Thank you.

The next panel, panel III, but it's also the last panel, is made up of Mr. Max Urick, athletic director at Iowa State University. He's been with the athletic department for over 12 years, and prior to that was a football coach at Wabash College in Ohio.

Jim White, from the University of Iowa, is the assistant for promotion marketing to the athletic director, and it's my understanding that your primary responsibility is negotiating TV contracts for the university.

We also have with us John Goebel, vice chancellor, University of Nebraska at Lincoln. He is the fiscal officer for UNL and has primary responsibility for finanical management at the university.

You're accompanied by two people from the university, if you'd like to bring them. One is Mr. James O'Hanlon, dean of teachers and college faculty representative to the Big Eight Conference, and by Mr. Richard Wood, who is in-house counsel for the University of Nebraska. Am I right on that?

Mr. GOEBEL. Thank you, Senator. Yes. I'd like to call them for the question period for questions that are particularly relevant to them.

Senator GRASSLEY. Before you start, does the reporter need a break, or anything?

Mr. LANDON. No, sir; I'm fine.

Senator GRASSLEY. So you're the only one that wants to come up here for now?

Mr. GOEBEL. Yes.

Senator GRASSLEY. OK. Well, let's start, then, with Max, and then Jim White and then John.

STATEMENTS OF PANEL CONSISTING OF: MR. MAX URICK, ATHLETIC DIRECTOR, IOWA STATE UNIVERSITY; MR. JIM WHITE, ASSISTANT FOR PROMOTION MARKETING TO THE ATHLETIC DIRECTOR, UNIVERSITY OF IOWA; AND MR. JOHN GOEBEL, VICE CHANCELLOR, UNIVERSITY OF NEBRASKA (LINCOLN), ACCOMPANIED BY MR. JAMES O'HANLON AND MR. RICHARD WOOD

Mr. URICK. I'd like to take this opportunity to thank the U.S. Senate Committee on the Judiciary, and especially Senator Charles E. Grassley, chairman of the Subcommittee on Administrative Practice and Procedure, for making the time and arrangements to hear responses to the 1984 college football television situation. The topic has been worked over extensively during the past several months by university administrators, members of the media—telecasting entities—and attorneys at law. Nevertheless, it appears the road ahead for the televising of college football games is still filled with considerable uncertainty.

In my opinion the suit initiated by the Universities of Georgia and Oklahoma has evoked a situation that has led to confusion, frustration and hard feelings by the public, college administrators, coaches, and those of us involved with intercollegiate athletics. It has had a serious impact on the intercollegiate athletic programs of our colleges and universities, regardless of size.

The deregulation of college football television has brought a proliferation of college football on TV. This overexposure poses a threat, real or imagined, that the patronage of the games in person, on campuses, will decrease. The effect of this drop in attendance could mean a serious decrease in the all-important financial base of support each school has needed to underwrite expanded intercollegiate athletic programs, including both men and women's activities.

Additionally, we believe there is more to a football Saturday than just the game. Concerts, lectures, displays and other activities have become a part of a college football weekend. It's important for institutions to have people on campus. Traditionally, a football game has attracted old and new friends to the university and is an opportunity to expose these individuals to the broader scope of university life.

The additional revenue that was expected from more college football on television was overstated. Prior to the Court's decision, advertisers paid top dollar for what was a reasonably exclusive product. However, the dilution of the market has forced the advertising dollar downward. That is, the supply has increased, but the demand has remained the same. Less revenue received by schools is an everpresent threat to intercollegiate athletic departments that operate primarily from generated revenue. The year prior to the Supreme Court's decision, the 1983–84 school year, the Big Eight Conference received approximately $5.2 million from football television appearances of conference members for 15 appearances. Through the Big Eight Conference sharing formula, Iowa State University's share amounted to just over $570,000. While this year's final total is not yet complete, it is anticipated that conference football television revenue will be about $5 million, for over 20 appearances. Iowa State University's share of this is projected to be $450,000.

A most distressing ramification of the recent decision pertains to the juggling of starting times to accommodate the televising of games. The traditional starting time of early afternoon on Saturday has been compromised. The inconvenience to fans and the ill will caused by the juggling of starting times as close as 10 days before the event, is a legitimate concern of ours and our supporters. It makes us wonder if the additional exposure and envisioned revenue was worth it. University athletic administrators are holding a double-edged sword in this regard.

A fourth major concern pertains to the impact that his situation has had on the smaller university. Prior to the Supreme Court's decision, small universities, Division I–AA, II, and III, were guaranteed some appearances and revenue. This was achieved during the time the NCAA marketed and controlled all of college football TV. Since the Court's decision and the prohibition of the involvement of the NCAA in television scheduling, the smaller schools have been virtually shut out of appearances and resultant revenues. We do not think this is best for a balanced intercollegiate athletic program. It seems appropriate to make room for consideration, to include, to some extent, the smaller colleges and universities.

It was anticipated that the 1984 football season was going to be an unusual one. Uncertainty prevailed, and is still rampant. How-

ever, I am optimistic and hopeful that an end to the uncertainty and return to a healthier perspective regarding college football and its relationship to television is around the corner. I am optimistic, because the feeling of dissatisfaction is common among university athletic administrators, and an effort to solve this problem is crossing conference lines, time zones, and personalities.

There seems to be a renewed effort to preserve the positive value of college football and maintain a perspective that is in the best interests of the universities and the young people that attend our universities. I would encourage this committee to continue to monitor this situation and extend what influence it can toward a resolution that is in sound keeping with the values of amateur athletics.

Senator GRASSLEY. Regarding your last statement, when we get to the questions I'll ask you the extent to which that includes legislation.

Go ahead, Mr. White.

Mr. WHITE. The University of Iowa is grateful to Senator Grassley and the Judiciary Committee for the opportunity to appear here today to express our views.

The Supreme Court's decision in *NCAA* v. *Oklahoma* is of concern to the University of Iowa. Our concerns involve, first, the anticipated loss of revenue which has and will result from the decision; second, the adverse effect of the decision on smaller universities, traditionally black universities, and women's programs; and third, the uncertain reach of the Supreme Court's opinion into other NCAA rules and, indeed, other activities of higher education.

Nevertheless, the University of Iowa does not believe that the higher education community should make a statutory exemption from the Sherman Antitrust Act its first priority. While we would consider supporting such legislation, our first congressional priority must be maintaining Federal financial aid for all students and Federal support for teaching basic and applied research and service.

To elaborate, we are concerned about the adverse effect of the decision on revenue. At the outset, it should be noted that the effect of the dismantling of the NCAA television plan on Big Ten universities during the current year has not been as severe as it has been for other Division I institutions. Last year, each Big Ten university earned approximately $700,000 from payments made under the NCAA television plan. During the current year, the university anticipates it will earn between $400,000 and $700,000 from payment made under agreements with CBS and several syndicators. In future years, we believe it would be unrealistic to anticipate earning more than several hundred thousand dollars annually from the sale of television football rights.

Although the University is disappointed that direct television payments will be lowered, we have greater concerns about the potential effect flowing from the decision on live game attendance and the scheduling disruption caused by the demands of the networks. We believe that the proliferation of live television games could adversely affect our attendance. And it is live attendance, or the gate, not football television payments, that provide the wherewithal to support men's and women's athletic programs at Big Ten universities.

For example, while the university anticipates earning from $400,000 to $700,000 from football television appearances during the current fiscal year, the university will earn approximately $3.5 million in home and away gate revenues from football. Our concern must be that live attendance be maintained; thus, we have concern that the excessive number of football games broadcast on television will adversely affect that gate.

We have the added concern that the proliferation of televised games has necessitated changes in starting times. These changes inconvenience our fans and further threaten attendance.

Our second concern relates to the adverse effect that dismantling of the NCAA television plan has had on other institutions, paticularly smaller institutions, and the traditionally black universities. under the former television plan, these institutions shared in the revenues from the NCAA plan and benefited from occasional television exposure. While the University of Iowa support for a developing women's athletic program will remain constant, we must have concerns that other and smaller institutions, when faced with the loss of television revenues, will not be able to support women's athletics at a level consistent with the growth in women's interests in intercollegiate competition.

Finally, both the Supreme Court's ruling and Judge Burciaga's opinion raise questions about the applicability of the Sherman Antitrust Act to other NCAA rules and create a possibility of additional costly and time consuming litigation.

Because of the conerns I have mentioned, the University of Iowa would consider supporting a congressional initiative to exempt intercollegiate athletics, and higher education generally, from the provisions of the Sherman Antitrust Act. It must be noted, however, that such an exemption cannot be higher education's or the university's highest congressional priority. Our first concern must be for continued Federal support for financial aid for all of our students and increased Federal support for teaching basic and applied research and services. These are the concerns most central to higher education and the University of Iowa.

Thank you.

Senator GRASSLEY. John.

Mr. GOEBEL. Senator Grassley, I'd like to read into the record a letter from Chancellor Massengale to your subcommittee.

The University of Nebraska-Lincoln feels that the Supreme Court decision, which voided the National Collegiate Athletic Association football television contracts has, for the most part, had an adverse effect on our television income for the 1984 season, in comparison to the 1983 season. While final figures are not available at this writing, we have every reason to believe that our revenue at the University of Nebraska-Lincoln will approximate 60 to 65 percent of what we received from the Big Eight Conference in 1983, despite the fact that our football team has been ranked exceptionally high, nationally, in both years. It appears that previously successful major programs are all suffering a similar fate. Futhermore, information we have received indicates that schools with less demand for TV exposure will suffer to an even greater extent in the current year.

The major universities throughout the country have not as yet been able to solidify their group so that they are able to bargain beneficially with the networks. Thus, we feel that there has been an oversaturation of college network funds available for rights fees. There have been several attempts to arrange a coalition between the College Football Association and the PAC-10 and Big 10 Conferences, but for various reasons, these attempts have not been successful to date. As a consequence, the

PAC-10 and Big 10 joined together to arrange a television package with CBS, while the CFA arranged a package with ABC.

Instead of 83 schools aligned to negotiate with one or more networks, the CFA had 63 members, while the PAC-10/Big 10 had 20 members. This lack of unification and lack of exclusivity, which the court ordered, has made it difficult for the networks to sell college football commercial time; hence, a dramatic drop in revenue, which has had a serious effect on some of the universities involved. It appears that if no coalition similar to the earlier NCAA arrangement is possible as a result of the current interpretation of antitrust laws, college football would be well advised to seek an exemption such as that granted professional football.

This letter is not meant as a criticism of any organization or university; it is merely a statement of facts, according to our experience during the 1984 season on the impact of Judge Burciaga's ruling, and the Supreme Court's judgment. We are not suggesting, either, that the return of the NCAA as administrator of college football television would drastically change the situation. We believe that oversaturation caused by the CFA-PAC-10/Big 10 splits, and the large number of games evolving out of syndication, conference packages, pay-for-view and other forms of television, has affected the public interest and that of potential advertising sponsors.

The best step to take at this time, in our opinion, is to encourage unification of the large universities, which would enhance the bargaining positions of the parties involved. And, as noted above, if such actions are unsuccessful, possible exemption from antitrust rules should be sought.

Thank you very much for your consideration of this correspondence.

Senator GRASSLEY. Max, I believe you were the only one of the three who wasn't specific on whether or not to legislation might be something you'd support.

Mr. URICK. Well, I think just based on this year's experience, it would be premature to say that. I think that the fact that it was so late when the decision came, actually late in July, early August, before a plan was developed, that it's only been, what, 4 or 5 months, I think that's maybe why I encourage close monitoring, perhaps. I would certainly not oppose it.

IMPACT ON WOMEN'S SPORTS

Senator GRASSLEY. Jim, I didn't have a prepared question on this, but I think it's something that I ought to ask. You touched on it in your testimony, and I applaud you for it, in regard to the impact on the women's programs, and I think you've set out very precisely how you feel about it. My only question would be, has this been something that's been discussed in the circles nationwide that you've participated in, or is this something you personally view as a detrimental impact of the decision, detrimental to women's programs?

Mr. WHITE. I would say, Senator, it would be difficult to say that there's any consensus on the national level, but I know it's a concern at the University of Iowa because there's such a commitment, as I think there is throughout the NCAA members, for equal opportunity. And I think we recognize that our football program, in terms of revenue, is a cornerstone, and that revenue has to be safeguarded. And we're simply aware of that, and we realize who the beneficiaries of that revenue happen to be, and they happen to be our other sports and the men and women who compete.

So I would just say I would expect a similar feeling would prevail at other institutions. And it is a concern at the University of Iowa.

Senator GRASSLEY. Do either of the other two have any comment on that point, particularly if you know whether it's been a point of

discussion at national meetings with which you would be associated where this issue has come up for discussion?

Mr. URICK. It has not been a point of discussion specifically, women's programs. At Iowa State we administer without regard to gender, so when we say our program is going to be hurt, it's going to be men and women.

Mr. GOEBEL. I can't speak to the question of any national meetings. I'll ask Dr. O'Hanlon to do that in just a moment. But any impact on our athletic program budget would affect women's athletics. The bulk of our support for our women's program comes from the men's program, and therefore, anything that would knock down the revenue that we receive—and we have experienced that decrease this year, and if you compare it to our expectations, it was even more serious of a decrease—will have an effect on women's programs.

Jim, has that been discussed at any of the meetings that you've attended?

Dr. O'HANLON. Well, I really haven't been to a national meeting yet. The next NCAA national meeting is in January, and it might be an appropriate topic of conversation then.

Senator GRASSLEY. We'll monitor that from our standpoint, then, so I can seek that information for myself, but I appreciate your bringing it out.

I have questions for all three of you as a group, so any or all of you can respond.

I think most of you did address in your statements the impact upon revenue, but so I can have it all at once, I'd like you, if you can, to summarize your receiving more or less revenue as a result of the decision.

Mr. URICK. We're receiving less revenue, but more appearances.

Senator GRASSLEY. All right.

Mr. WHITE. We're receiving approximately $300,000 less revenue, and we've been on television a considerable amount more.

Mr. GOEBEL. We're receiving less revenue compared to last year. I think it should also be noted that it's considerably less than expectations for this year.

Senator GRASSLEY. Does the Supreme Court's decision affect your school's negotiating position regarding television coverage of any future bowl bids your school may receive?

Mr. URICK. Pertaining to bowl bids?

Senator GRASSLEY. Yes.

Mr. URICK. We're not really being considered this year, so—[Laughter.]

Senator GRASSLEY. Yes, I know you aren't, but from your standpoint, as best you could judge the impact, to generalize for the future.

Mr. URICK. I see it as two separate issues.

Senator GRASSLEY. You don't see any relation?

Mr. URICK. No.

Senator GRASSLEY. Well, if that's the case, then that's all right. Mr. White?

Mr. WHITE. Senator, I think in virtually all the situations the individual bowl can negotiate their own television rights. So when

you accept a bowl invitation, you're just part and parcel of their package.

Mr. GOEBEL. As a nonexpert in the field, I would have to guess that there will be some impact, in that your attractiveness depends upon exposure. By the same token, it's all relative to other people's exposure. So I think there would have to be some impact, but certainly not directly, upon the negotiations with the bowl.

EFFECT OF TELEVISION ON FOOTBALL

Senator GRASSLEY. Can you give me your views on what effect you feel television has on the game of college football, and can you see a situation—and this is the point of the question—where, due to the operation of the free market, competition for television revenue will be so stiff that schools will be forced to go to any lengths to develop winning teams?

Mr. URICK. I think whenever money seems to be a primary goal that that is a very real threat. I think that's compounded by the rises in scholarship costs, that the question is where is new money going to come from. And television always seems to be waiting in the wings. And that seems to be more acceptable than raising ticket prices to extreme levels.

Senator GRASSLEY. Mr. White?

Mr. WHITE. I think probably for the last decade or two there has been an increase in pressure placed upon not only coaches and administrators, but also on the players. And I think live television exacerbates that problem.

I think, as Max does, that should we reach a situation where we have a relatively few number of schools achieving or obtaining most of the exposure, that could in fact become a problem.

From what we're able to observe, it's directly on the minds of our coaches and players in terms of abusing the rules, or even contemplating that type of action, specifically tied to television.

Mr. GOEBEL. I can't really add to what has been said by the two who have spoken to it before. Obviously money can create pressures.

Dr. O'Hanlon, do you want to comment on that?

Dr. O'HANLON. It would just seem you'd have greater potential for great swings in your program, and if you're depending on high revenues from TV and gate receipts and you have a poor team, you can lose that in a hurry.

Senator GRASSLEY. Referring back to what Mr. Byers said about 30 percent of the cheating that goes on, and that's directly related to this heavy pressure from television, do you basically agree with that?

Mr. URICK. Well, the word cheating has a certain connotation about it, and there's a difference between cheating and being in violation of an interpretation.

As an example, this past 2 weeks we received, through a weekly periodical from the NCAA, where the interpretation came through that you could not have a graduate assistant coach scout your opponent, and we've been doing it all season. So very quickly you run down and tell our coaches, "Hey, take him off the road. He can't scout." the very next week, an interpretation comes that says,

"Forget last week's interpretation. It's OK to have your graduate assistant scout."

The same thing happened pertaining to an interpretation regarding printed recruiting materials. Most schools have a regular mailing list that they send out to their recruits. They have various items—picture postcards, picture posters of their school, particularly sports. Everyone prints those up ahead of time, and you plug them into a computer and send them out on a regular basis. Two weeks ago, or a week ago, the interpretation came through that this was illegal.

So while those in fact are violations, I'm not sure you can call those cheating.

Senator GRASSLEY. We have the same problem in the Senate with our own ethics laws, as they affect individual Senators.

Mr. White.

Mr. WHITE. Again, I don't know that television—you know, that we could say it's directly responsible for a given amount of cheating or violation of the rules, and I can't speak for any other universities, nor could even offer a comment on a 30-percent figure. I think we could speak for the University of Iowa and our people and our staff, but I think our position would be that as television exposure increases, there is simply increased stress on coaches and players to perform, to win, to compete, to be No. 1, because as our fans become more educated in the game of football, the pride of our fans, the pride of our State, there's a lot riding on the success or failure of an athletic program at the national level.

So I would say, without doubt, television contributes to that, but whether it's 30 percent or 5 percent I think is conjecture.

Mr. GOEBEL. I can only comment on our school. Our program is very carefully monitored, and we believe we have a very sound ethical program. I'm comfortable with the notion that major football schools or major football programs have the same high ethical standards.

The only comment that I could make other than that would be consistent with what Mr. White said; namely, as you put these increased pressures on these athletic programs at various institutions, you've likely to find people who are perhaps less inclined to be careful in interpretation of the rules.

Senator GRASSLEY. I'd next like to ask you if you supported Oklahoma and Georgia bringing the suit, and maybe the answer to that ought to be obvious, since you're told me how you believe—at least two of you stated that maybe Congress ought to deal with it and give antitrust exemption under the Sherman Act. But I still would like to know if any of you thought Oklahoma and Georgia was doing the right thing in 1981 when they brought that suit.

Mr. URICK. I'd say, on behalf of Iowa State, we cast a very reluctant yes, because of our lot in the Big Eight Conference.

Senator GRASSLEY. Mr. White.

Mr. WHITE. Our position was consistent with that of the Big Ten, and we elected not to support the suit.

Mr. GOEBEL. I think the problems that we had are evident from our record, and I wouldn't change anything I have in the statement.

NO-CROSSOVER RULE

Senator GRASSLEY. OK. Have you been affected by the prohibitions against crossover, any of you?

Mr. GOEBEL. Yes, we have.

Senator GRASSLEY. In what way?

Mr. GOEBEL. I would prefer to have Dick Wood answer that.

Mr. WOOD. We were involved, Senator Grassley, in antitrust litigation involving the Big-10/PAC-10 Conferences, UCLA and Southern California, as plaintiffs, against the University of Nebraska, Notre Dame, the CFA and ABC. A suit was filed in Federal district court in Los Angeles, challenging the CFA/ABC no-crossover rule. We have declined to give our consent to appearing on television in the UCLA-Nebraska game because of that no-crossover rule. We felt we were contractually obligated to go along with the CFA/ABC contract.

Notre Dame took the same position.

There was a hearing in early September. Judge Gadboy, a Federal district judge in Los Angeles, held that the no-crossover provision violated the Federal antitrust laws, and enjoined the University of Nebraska and Notre Dame University from refusing to consent because of the no-crossover provision.

Also, the decision enjoined both the CFA and ABC from imposing any sanctions against either Nebraska or Notre Dame because of the no-crossover rule.

In light of the decision, that Federal court decision, the University of Nebraska made a decision to where we felt it was in our best interest to consent to the telecast of the UCLA-Nebraska game. It was, in fact, telecast.

The decision was appealed to the Ninth U.S. Circuit of Appeals, which recently affirmed the Federal court decision. And I think as a result of that, the Notre Dame-USC game will also be telecast this coming weekend.

So we were directly affected, being involved in some litigation and some expense because of it.

Senator GRASSLEY. You don't think we'll see any more prohibitions, then?

Mr. WOOD. On the no-cross rule?

Senator GRASSLEY. Yes.

Mr. WOOD. I think that the University of Nebraska would be considerably reluctant to participate in any type of an agreement that had such a provision.

Senator GRASSLEY. Again back to my question, Jim, and then Max.

Mr. URICK. Could I clarify your question?

Senator GRASSLEY. Yes.

Mr. URICK. As to whether or not we supported the University of Oklahoma, they acted independently and didn't really ask for support or not. We supported, because of time constraints, the CFA plan to market college football television for 1984, and that was a reluctant yes vote. It had nothing to do with the University of Oklahoma.

Senator GRASSLEY. OK. Now, in regard to my question about the crossover, have you been affected by the prohibition against crossover?

Mr. URICK. We have not been, but I would not support a plan that would have that kind of a provision in it.

Senator GRASSLEY. Jim.

Mr. WHITE. We were affected to the extent that we were scheduled, when we played Penn State, a CFA member school, and that game was not televised, and it became very cumbersome and complex as to whether or not we could put that on television. And I think the cross over provision was a factor among many other things. But that was the only case where we played a CFA school that we didn't televise.

Senator GRASSLEY. The last question gets to a philosophy that was probably best discussed earlier today by John Kurtt's statement, regarding the insensitivity of institutions such as those that have brought the suit, and particularly that they have little concern for what athletic programs are all about or ought to be about. And if this is the case, can smaller athletic programs even survive?

Now, you've heard John express something similar to that. How do you share the problem presented by the small colleges, and whether or not we aren't forgetting a lot of athletes and a lot of programs where there's going to be a loss of revenue as a result of the decision?

Mr. GOEBEL. I can't speak to the impact on our program, because I've never looked at any of our financial statements. I have a sense of that, but I'm certain, as I sit here, that it would be adverse. However, from our point of view, I believe that the University of Nebraska, Lincoln, is concerned about athletics generally, not just a program at an institution. I think our behavior substantiates that.

Senator GRASSLEY. Jim.

Mr. WHITE. I think, in dealing with our administration at the University of Iowa, I've sensed a very sincere concern for area colleges and universities. Ours isn't a position that's taken lightly, and when we had opportunities under NCAA legislation to do an exception telecast, it was deliberated for a long time whether or not we should even attempt to do it, because of the effect it would have on area schools.

So, you know, I think our position is that, as John has stated, we look at intercollegiate athletics as one institution in our country, and we feel there's a place for every size of institution to compete.

I would just hope that there is not the general assumption that bigness is, per se, bad, because we don't feel that's the case. And at the division I level I think there are a tremendous number of benefits that are derived from competition at that level that we would hope could be preserved, and also that division II and division I-A could operate in harmony.

Senator GRASSLEY. Thanks.

Mr. URICK. I would not take issue with John's concern—in fact, I think we share that concern—of how football television, the proliferation of television, per se, might affect the smaller colleges and universitites that have perhaps less extensive programs.

I don't know what the answer is; I really don't. But I don't think Iowa State would want the Wartburg fans to stay home from a Wartburg event, to watch an Iowa State event on television. I would not think that would be particularly good, and I would hope that there would be some kinds of considerations included.

Senator GRASSLEY. As a followup on each of your responses, which, from my standpoint are very positive, and I'm sure schools the size of Wartburg will consider them very positive, now there's a meeting coming up of the NCAA in January where I assume some of the general issue will be discussed, do you think that as you get into those seminars, or however you do your business, that the concerns of the Wartburgs will actually be an issue for serious discussion, as you and your individual institutions say you share the concern?

Mr. URICK. I share that concern, but in all reality I can't see where the concerns of division II and III will be the No. 1 concern of division I schools in discussing this. So that I think his concerns are very real concerns, and they're not easily solved.

Senator GRASSLEY. And might not even be addressed, you're suggesting?

Mr. URICK. I don't know. That could be.

Senator GRASSLEY. That's really my last question, so I'm not going to keep you here much longer.

Mr. GOEBEL. Since I don't attend those meetings, and Dr. O'Hanlon does, I'd like to have him respond to that.

Dr. O'HANLON. Well, I'd just have to agree with Max. I think people will be aware of those concerns, but as has already been pointed out, in order to have even close to the same kind of earnings that you had previously, you'd have to be on more times. And right away, division I schools are going in an opposite direction in showing their concern, and I'm not sure that division I schools are going to be willing to have their earnings cut back all that much more.

So I think there is a conflict that will build up, and since gate receipts really are the heart of all of our programs, and the question was raised earlier about what will happen to gate receipts is really the crucial issue here, and I think it's really much too early to know on that, with the Supreme Court decision not coming until midsummer and with season tickets already purchased, and everything.

As you saw from the testimony of the independent cable operators, they want to televise more games, and in fact as I see the action being taken by them it almost forces us to televise more games, or not to be able to deny televising them because of any pact that we've entered into to limit our television.

So I guess the concern about what will happen to the smaller programs is really a very big concern.

Senator GRASSLEY. That's all the questions I have. Do any of you have closing comments you want to make before I dismiss the panel? Then I have a short closing statement.

[No response.]

OK. Then let me thank you as a specific panel for coming, and we appreciate your participation.

I'd like to thank all of our witnesses for testifying today, and I, of course, know that this was a very busy time for people involved in university and collegiate athletics, a busy time for them to come, but also I think that's what makes our hearing very timely, as we have it now at the near end of the football season.

So my thanks to all of you, and especially to the University of Northern Iowa and Bob Bowlsby for being our host. The record we've developed here today will provide the Senate Judiciary Committee and the Congress as a whole much needed information as it continues its deliberations on this very important issue.

In conclusion, it is apparent that a number of serious problems have arisen in the wake of the NCAA case. The issues of increased pressures on schools to produce winners, and the question of what happens to smaller football programs remain to be answered.

I would hope that the academic community can reach some kind of accommodation among its members, and will consider the issues raised here today in the pursuit of those meetings that they have. I don't anticipate that Congress will be anxious to pass legislation revising the antitrust laws. However, the more serious these problems become, the more pressure there will be to do something to solve them, and obviously here today we've even had some of the witnesses suggest that we do take that route of having antitrust exemption.

The record, of course, as I said previously, will remain open for 14 days for any further submissions, and as other committee members are interested in the subject, for any answers to questions they may submit. And one or two of the witnesses did take the responsibility of giving some answers to us in writing which they could not give orally at this time.

So I say thank you all very much, and the hearing is adjourned.

[Whereupon, at 3:35 p.m., the hearing was adjourned.]

APPENDIX

[From the New York Times, Oct. 13, 1984]

N.C.A.A. Head Asks Assault on Rampant Abuse of Rules

(By Peter Alfano)

Walter Byers, the executive director of the National Collegiate Athletic Association, says that illegal payments and other improprieties are so widespread in intercollegiate athletics that a convention of university presidents should be called to explore the possibility of a tougher violations code.

Among the penalties Mr. Byers said he would like to see for the most serious cases are more routine curtailment of scholarships, dismissals of coaching staffs and suspensions of team schedules for one year or more.

This is the first time that Mr. Byers has acknowledged the size of the payments to athletes, which he estimates to be up to $20,000 or more a year, and he says that the N.C.A.A. is losing ground in its attempt to enforce the rules and maintain the integrity of big-time college sports.

"We're not keeping up with the chase," Mr. Byers said. "I've talked with our representatives and people I respect and the problem is much worse than I thought."

Mr. Byers said in an interview at the N.C.A.A. offices in Mission, Kan., that "I have the belief that an overwhelming number of people—the presidents, athletic directors, faculty and coaches—want a better world in intercollegiate athletics. I think they will embrace a new order."

Dr. John Ryan, the president of Indiana University and chairman of the Presidents Commission, which was formed to look into the problems facing intercollegiate athletics, said yesterday that the feeling among the commission members and fellow presidents and chancellors is to accept Mr. Byer's assessment of the situation. The commission also is agreeable to holding a convention at an unspecified date.

"We had a meeting on Oct. 3 and 4 and voted to initiate the steps necessary to calling a convention," Dr. Ryan said, "But it is important to do the preliminaries, the fact-gathering, so we can have before all the presidents the problems we've studied."

Dr. Ryan said, however, that he did not lean toward implementing the harsher penalties suggested by Mr. Byers. "I'm not ready to do something about the problem like jacking up the penalties," he said. "It's not how hard you come down, but generating the will to purge athletics of the practices and people not consistent with the values of the institution. There is no sense shutting down a bank because the president is embezzling money. I'm not vengeful or retribution-minded."

The N.C.A.A., Mr. Byers emphasized, has expanded its enforcement division in recent years. But what is needed, he added, is a recommitment by the membership to more honest programs.

"In a society, there will be chronic violators in any system," Mr. Byers said. "But I think this is worth the effort. With a conscientious re-evaluation . . . it could very well work. If it doesn't, then intercollegiate athletics could be seriously damaged or destroyed as we know it."

N.C.A.A. HEAD SINCE 1951

Mr. Byers, who is 62 years old, has been the executive director of the N.C.A.A. since 1951. Although he said that his duties were to implement the programs and enforce the rules agreed to by the N.C.A.A. membership of 791 colleges and universities, he has wielded considerable influence during his term and has been attacked on occasion by some school administrators, athletic directors and coaches for being autocratic.

Although the N.C.A.A. did suspend the basketball program at Southwest Louisiana for two years beginning in the 1973-74 season, it was an extraordinary action taken only because or the number and severity of violations. Mr. Byers wants harsher penalties such as the one used against Southwest Louisiana to be predetermined to fit specific violations and be invoked more frequently.

MANY FORMS OF PAYMENT

Illegal payments, Mr. Byers said, can come from a variety of sources: sale of an athlete's allotment of season tickets at inflated prices, purchasing an automobile for an athlete and outright cash handouts.

Mr. Byers would not identify schools or athletes involved in receiving the large payments. David Berst, the N.C.A.A. director of enforcement, said: "Mr. Byers is bound by the written policies and procedures that require us to keep that information confidential." Mr. Berst added that the executive director does inform the internal committees of the N.C.A.A. and the schools under investigation of all the specifics in a given case.

Mr. Byers said the violators are using "sophisticated techniques" to get the payments to the athletes. These techniques, he said, are extremely difficult to detect. He also said that most violations occur in football and basketball, but are not limited to those sports.

From January 1981 to the present, 39 schools with varying sizes of athletic programs have been on N.C.A.A. probation for numerous rules infractions. Mr. Berst refused to say whether any of them was guilty of making large payments to athletes. He acknowledged, however, that an average of 10 to 12 investigations a year by his office involve allegations of payments in the $20,000 range. Not all are proven, he said.

Mr. Byers said he thought that 10 percent of the universities playing major sports were "chronic violators" of the rules and that another 10 to 15 percent "don't want to do it, but because of the so-called competitive pressures, will turn their head." There are 278 schools with Division I-A athletic programs.

THE PHELPS ACCUSATIONS

In late March 1982, Richard (Digger) Phelps, the head basketball coach at Notre Dame, charged that a number of colleges across the country were paying a standard rate of $10,000 a year to outstanding basketball players. He said that the price tag was as high as $20,000 for a good college football player. Mr. Phelps was criticized in the coaching profession at the time for his statements.

"I didn't believe it at the time and I believe it now," Mr. Byers said, referring to the charges of the payments. "I won't speak to a sport, but to the value of the money. And we've had people tell us on a confidential basis that it's more than that."

"I was surprised," he continued. "I was led into the belief that the trafficking was at a low level to take care of expenses. Coaches have asked for $50 or $100 monthly allowances for players. But we're talking about more than that. It's thousands of dollars and it happens more frequently than I thought."

But eight schools currently on probation denied that any of the violations they were cited for involved large payments. "Of the things we were accused of and which were proven, none pertains to dollars or things of value like cars or that kind of money," said Bob Hitch, the Southern Methodist University athletic director.

And Bill McClellan, the athletic director at Clemson, said: "In our case, there were no massive amounts of money. Ours were for transportation, meals and the like. There were two allegations, one of which involved taking a $500 payment, but nothing involved the kind of money" that Mr. Byers talked about.

"Our coaches were accused of a lot of things but the N.C.A.A. never got us on that kind of money," said Lewis Perkins, the athletic director at Wichita State. "Did it happen or not? I'm not saying that it did not happen, but I was not around in this job at the time."

John Bridgers, the New Mexico athletic director, said that he could not envision anyone in Albuquerque, where the campus is situated, who could pay large sums to athletes. "Not that kind of money," he said. "If so, it was not brought out in any of the allegations."

"I came into this position a year ago September," said Peter Dalis, the U.C.L.A. athletic director, "so I don't have any information. The material I read on the case does not indicate to me anything of that dimension."

Arnold Short, the Oklahoma city athletic director, added: "Our violations were very minor. That kind of money would scare me to death. I came into the job and we found and reported the violations ourselves to the N.C.A.A."

TELEVISION A MAJOR FORCE

The large payments Mr. Byers referred to are reportedly made by school boosters and others close to the athletic program to censure its continued strength. There is more than tradition and school pride involved: It is a matter of economics. Mr. Byers said that television is a major force in the growth of intercollegiate athletics, thus raising the competitive stakes for schools with big-time programs.

But it also was Mr. Byers who negotiated the increasingly lucrative television contracts with the networks, the most recent in 1982 when the N.C.A.A. sold its football broadcast rights for $263 million, the bulk of it purchased by CBS and ABC. The contract was declared void last June by the United States Supreme Court, which ruled for the Universities of Georgia and Oklahoma that the N.C.A.A. was in violation of antitrust laws when it acted as the sole bargaining agent of the colleges.

As a result of the Supreme Court decision, there now are not restrictions on the number of television appearances by a school, thus, a glut of games is available in most viewing markets every Saturday during the football season. This has lowered the rights fees and make less money available to the college powers who had envisioned just the opposite. Mr. Byers said he and his organization were not blameless for what is happening in college sports today and said he had perhaps encouraged the temptation for schools to violate rules in search of winning teams.

"The N.C.A.A. has contributed to the system," Mr. Byers said. "We have helped build the demand. TV exposure is a factor. It's a psychology. Schools are asked: 'Aren't you on TV?' "

LITTLE REMORSE EXPRESSED

But Mr. Byers said he also has sensed a lessening of cooperation among coaches, a lack of power among some presidents to take action and very little remorse expressed by most schools that are placed on probation. "I will say that it bothers a lot of our people who sense a lessening of resolve among coaches that the rules are enforced," he said.

"Fewer coaches are willing to cooperate," he added, stressing that he thinks the "younger generation" of coaches is less cooperative.

"I don't believe that presidents get into the area of collusion," Mr. Byers continued. "They are helpless in the environment that they operate. There may be a group of trustees who want a certain standard in athletics. But because these presidents may be pacifists, it doesn't mean they are comfortable. A lot are just disconsolate about what do do about it."

Still, he pointed to the President's Commission, a committee of 44 presidents and chancellors who are studying the problems confronting the athletic programs, as evidence that action is being taken.

Mr. Byers added that, "a voluntary enforcement system cannot work unless institutions agree. If enough combat us, the enforcement system is useless."

WHY PICK ON US

The prevailing attitude among some athletic departments, he said, is that everyone is breaking rules so why pick on us? The N.C.A.A. rules, he pointed out, are not the law of the land, only a code of conduct agreed to by the membership. Perhaps, he said, the association is wrong to impose its moral values on individual members.

If the colleges are unwilling to make the reforms, Mr. Byers said, then they might as well go to an open division as he proposed a month ago in an interview with Sports Illustrated. That suggestion astounded many of those in college athletics and administration. In an open division, there would be fewer rules and student-athletes would become semi-professionals who are paid for performing.

As an example, he cited the trust funds that enable athletes in track and field to earn money but to retain their amateur standing. He was impressed, he said, how the definition of an amateur has become liberalized by the International Olympic Committee.

But the open division suggestion has not met with favorable response, Mr. Byers said. He estimated that 90 percent of those he has spoken to in administration and coaching at the major-college level oppose declaring themselves professionals to any degree.

"Within the collegiate family, no one of thought or substance wants to see the Olympic concept brought into intercollegiate athletics," he said.

There are consequences that institutions might face if they chose the semi-professional route, Mr. Byers said. Alumni and residents in a college town might reject the concept and no longer be as loyal. Some prominent faculty members might choose to work in another environment more conducive to learning; players might organize as their counterparts at the professional level have, and some top athletes might be more inclined to pass up college entirely and seek to play in the professional legaues after graduation from high school.

Mr. Byers said he doubted whether any university would be willing to be exposed to these possibilities. He suspected they would rather institute reforms. "The rewards have escalated so fast and the penalties have not increased at the same rate," he said. "Probation is considered the price of doing business by some schools."

PLAYER TELLS OF OFFER

DALLAS, Oct. 12 (AP)—Keith Stanberry of Oklahoma, a leading recruit in 1981, says he might be playing for Southern Methodist University if an S.M.U. alumnus had not offered him cash and a car to sign with the school.

"I feeel like he was trying to buy me and I didn't want to be put in that position," Stanberry said. "Oklahoma didn't offer me anything and Texas didn't offer me anything. S.M.U. was the only one that came at me like that."

The Mount Pleasant defensive back is now a senior at Oklahoma. He told his story last year to the National Collegiate Athletic Association, which has been investigating the S.M.U. athletic program and alumni recruiting for 20 months.

Stanberry told The Dallas Times Herald the offer was made by William Means Jr. of Mount Pleasant, a 1971 S.M.U. graduate who was a loan officer and vice president of a Mount Pleasant bank at the time.

"He said, 'What kind of car do you like?' I said, '280Z.' He said, 'You can have that if you sign with us,' " Stanberry said.

Means denies making the offers and says he did not even try to recruit Stanberry for S.M.U.

Stanberry also says Means offered him a $10-an-hour summer job "to do nothing" except work out and lift weights.

[From the New York Times—June 29, 1984]

N.C.A.A. MOVING TO CLARIFY TV RULING

(By Gordon S. White, Jr.)

ROSEMONT, ILL., June 28—One day after its exclusive control of college football telecasts had been voided by the Supreme Court, the National Collegiate Athletic Association began the process today of returning to a lower Federal court to determine the extent of direction it will be allowed to impose.

The ruling by the High Court permitted the possibility of a continued N.C.A.A. role in football-telecast regulation. But the court left it to Judge Juan Burciaga of United States District Court in Oklahoma City, who first heard the antitrust suit that was decided Wednesday, to rule on the level of that role.

While the N.C.A.A.'s lawyers prepared papers seeking a hearing before Judge Burciaga, uncertainty prevailed today in this Chicago suburb as representatives of the 105 schools in the organization's chief football division, I-A, opened a two-day meeting.

That this regularly scheduled meeting followed the Court's decision by only a day was coincidental, but the ruling was by far the major topic of conversation—and confusion. Still, there was one area of agreement among most participants: Before deciding whether to submit to some reduced N.C.A.A. control or to arrange national deals under the auspices of the College Football Association or individual conferences, that wanted to see what a new N.C.A.A. plan entailed.

Meanwhile, the effects of the landmark ruling were becoming quickly apparent.

In New York, the Ivy League, also, whose eight members compete in Division I-AA, announced an agreement by which the Public Broadcasting Service will televise nine games to the Northeast this fall. The packager, Trans World International is seeking five corporate sponsors, which would pay a total of slightly more than $1 million. A portion of the money will be shared by the Ivy schools.

In Baton Rouge, L.S.U. signed a three-year contract with Nashville cable-TV packager, SportsView, to pipe the university's football games into homes across Louisiana on a pay-per-view basis. L.S.U. had already had a pay-per-view program in effect for the last two seasons, but until Wednesday's ruling the N.C.A.A. had prohibited the broadcasts to be piped into areas where a local college team had a home game scheduled.

These developments followed an announcement Wednesday by Metrosports, a syndication service based in Maryland, that it had already signed a contract with the Big Ten and Pacific-10 conferences to televise those leagues' games on a weekly basis. The Turner Broadcasting System, meanwhile, was still pursing a deal with the Southeastern Conference.

All of these deals will presumably be a part of the so-called window concept that has evolved in recent months, under which certain Saturday hours would be available for the individual schools or conferences to sell their games to the highest bidder, in addition to whatever national plan is agreed upon.

Both CBS and ABC, whose contracts with the N.C.A.A. were voided on Wednesday's decision, said today that they were likely to continue in the bidding for games under a national plan. NBC, which in recent seasons has not televised college football other than bowl games, has had no public statement indicating whether it will join the bidding.

With regard to the N.C.A.A.'s next step, Walter Byers, the organization's executive director, said:

"Our lawyers are doing what is necesary to gain a bearing before Judge Burciaga. We have not yet heard when that will be. But if it is sometime next week, then it is probable that the N.C.A.A. will hold a special convention within three weeks."

Some of the Division I-A representatives meeting here were divided today on whether to wait for such an N.C.A.A. court decision and convention or to go ahead with alternative football television packages. But the regular major college football season begins Sept. 1, and all these officials agreed that this left little time in which to decide how to handle football TV for the 1984 season.

John David Crow, assistant athletic director at Texas A&M, said, "How can we be expected after that complex ruling yesterday to decide in a vote tomorrow just what to do with our TV? This is too important not to take some time."

Gene Corrigan, Notre Dame's athletic director, said, "We can't wait forever. We have to move in some direction, and soon."

WORKING AGAINST TIME

Wayne Duke, commissioner of the Big Ten, reiterated his stand that he wanted his league to be part of an N.C.A.A. plan, and representatives of the Pac-10 expressed similar feelings. Of the major football powers across the country, these are the only two leagues whose members do not belong to the 63-school C.F.A.

Chuck Neinas, executive director of the C.F.A., obviously wanted a decision during the two-day meeting here that ends tomorrow.

Speaking to C.F.A members, Neinas said, "I ask all of you to be prepared before we leave to come to some kind of conclusion as to what path to follow."

Since the N.C.A.A. does not know what it will be permitted to do until it hears from Judge Burciaga, any plan approved here this week would be primarily a C.F.A. plan.

Otis Singeltary, president of the University of Kentucky and president of the F.C.A., said, "I'd like to know what the N.C.A.A. has to offer. I don't know that we can move until we know that, but we have so little time."

[From Time July 9, 1984]

TAKING AWAY THE N.C.A.A.'s BALL—AND IN OTHER COURT DECISIONS, THREE ADMINISTRATION VICTORIES

(By Michael S. Serrill, reported by Anne Constable, Washington and Don Winbush, Chicago)

Every year before its summer recess the U.S. Supreme Court caps months of work with a final deluge of opinions that appears to undermine the institution's image as a temple of calm reflection. Whether the cause is the court's work load or the Justices' inclination to be dilatory, this year has been no different. At the start of last week, the court still had 43 undecided cases, almost one-quarter of the full term's output. By the end of last week, 20 decisions had been announced in a mountain of

opinions, concurrences and dissents. One in particular stirred broad national interest: the Justices took the ball away from the N.C.A.A.

In 1951, recognizing TV as a threat to gate receipts, the National Collegiate Athletic Association created a "television plan" that gave it exclusive control of all college football broadcasts, a control that is now measured in big money. For 1982-85, the N.C.A.A. negotiated $281 million worth of TV deals covering its 509 members that have intercollegiate football teams. Contracts with ABC and CBS contained numerous restrictions designed to spread the wealth. For example, they guaranteed television appearances to both large and small schools, established limits on the number of games that could be broadcast, barred any team from appearing more than six times in two years and effectively set the price teams could receive for a broadcast.

In 1981 the universities of Oklahoma and Georgia sued, charging that the N.C.A.A.'s TV contracts illegally restrained the commerce in long passes and end runs. Last week the Supreme Court upheld their claim. Writing for a 7-to-2 majority, Justice John Paul Stevens found that however worthy the N.C.A.A. might be, it had violated the federal antitrust laws. Dissenting Justice Byron White, a former football All-American at the University of Colorado, argued that the TV plan was just one element in a larger N.C.A.A. structure designed to discourage the "professionalization" of intercollegiate sports. Stevens saw the action differently. Without the N.C.A.A. restrictions, many more games would be broadcast by local stations, he observed. "Individual competitors lose their freedom to compete. Price is higher and output lower than they would otherwise be, and both are unresponsive to consumer preference."

By coincidence, the N.C.A.A. and its Division I-A schools—the biggest football powers—were meeting in Chicago right after the high court ruling, and they frantically sought to avoid chaos and the dread consequences of TV oversaturation. There seemed to be strong sentiment for some sort of voluntary TV package put together by the N.C.A.A. The court appears to have left room for a loosened arrangement, but it remained unclear exactly what kind of plan could now pass muster. In the meantime, pressure for some schools to make private deals is already formidable.

Notre Dame, whose team is the most marketable to a national audience, has been offered $20 million for its schedule, though for now Athletic Director Gene Corrigan favors a group arrangement. In anticipation of the court's decision, the Big Ten and Pacific-10 conferences had already signed separate provisional TV deals. Oklahoma and Nebraska had also put their fall schedules up for sale, but they were disappointed with the results. "A lot of people felt that the open market would be a golden market," said John Swofford, head of the N.C.A.A.'s football television committee. "I don't think that's going to be the case. I see more games being broadcast, but I see those games worth fewer dollars." With the season openers only eight weeks away, college football teams had the ball again, but they were running it back out of their end zone.

The court's rulings last week also gave the Reagan Administration, which has done well before the high bench this year, three more victories.

The Administration was happiest about winning its bid to ease some antipollution regulations. In areas of the country that do not meet national air-quality standards, federal law requires an elaborate permit procedure for the construction of new or modified industrial facilities. In 1981, however, the Environmental Protection Agency ruled that the permit requirements do not apply if increased pollution from an addition is offset by a pollution reduction elsewhere in the plant. By a 6-to-0 vote, the court found that there is nothing in the law to bar this so-called bubble approach. In language that should strengthen the authority of agencies to interpret the statutes they administer, Justice Stevens wrote, "Federal judges—who have no constituency—have a duty to respect legitimate policy choices made by those who do."

The Administration also won when the court upheld regulations that in practice bar travel by most citizens to Cuba. Under a 1977 law, Congress required that the President declare a "national emergency" and consult with Congress before imposing economic sanctions on foreign countries. Without following these procedures, the Treasury Department in 1982 prohibited the spending of U.S. dollars on hotels and other tourist accommodations in Cuba. By a 5-to-4 vote, the court agreed with the Administration that the restrictions were allowed under a technical reading of the "grandfather clause" in the law.

The third pro-Government decision grew out of plans for a 1982 demonstration in two parks near the White House. To call attention to the plight of the homeless, the Community for Creative Non-Violence proposed to put up 60 tents to house actual homeless people. The National Park Service authorized the tents, but invoked an

anticamping regulation and refused to allow demonstrators to sleep in them. C.C.N.V. sued and lost, 7 to 2. Dissenter Thurgood Marshall agreed with the group that a homeless sleep-in was the very essence of its protest and, though "a novel mode of communication, " should have been allowed. But Justice Byron White, writing for a seven-judge majority, held that under the First Amendment the Government has the right to make the conduct of demonstrators "subject to reasonable time, place and manner restrictions." Once again, the court seemed to say, the Reagan Administration had to deftly found legal support for its actions.